United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-4077

In The

United States Court of Appeals

For The Second Circuit

STOLL INDUSTRIES, INC. and MELANGE SPORTSWEAR, INC.,

Petitioners,

-against-

NATIONAL LABOR RELATIONS BOARD,

Respondent.

B
Pls

JOINT APPENDIX

Volume I, pp. JA1-JA234

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UNITED STATES COURT OF APPEALS
FILED
MAY 2[illegible] 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

(9597)

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

APPENDIX

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

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In the Matter of:

STOLL INDUSTRIES, INC.

and

MELANGE SPORTSWEAR, INC.

and

KNITGOOD WORKERS UNION LOCAL 155
INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, AFL-CIO

and

LOCAL 318, INTERNATIONAL BROTHERHOOD
OF PULP, SULPHITE AND PAPER MILL
WORKERS, AFL-CIO

Case Nos.
29-CA-4192,
29-CA-4256

----------x

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

In the Matter of:

Stoll Industries, Inc. and
Melange Sportswear, Inc.

Case Nos.: 29-CA-4192 and
29-CA-4256

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DECISION (Dated November 13, 1975)

JD-648-75
Brooklyn, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

STOLL INDUSTRIES INC. and
MELANGE SPORTSWEAR INC.

Respondents

and

KNITGOOD WORKERS UNION LOCAL 155,
INTERNATIONAL LADIES' GARMENT WORKERS
UNION, AFL-CIO

Cases 29-CA-4192
29-CA-4256

Charging Party

and

LOCAL 318, INTERNATIONAL BROTHERHOOD
OF PULP, SULPHITE AND PAPER MILL WORKERS,
AFL-CIO

Party to the Contract

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DECISION

HERZEL H.E. PLAINE, Administrative Law Judge:

These cases grow out of the alleged activities of the Respondent employers to coerce their employees to join one labor union--Local 318 of the Paper Mill Workers (Local 318)--in preference to another--Local 155 of the Ladies' Garment Workers (Local 155).

Respondents, who together are engaged in the design, manufacture, and sale at wholesale of ladies' sweaters, knit goods, and related garments, are charged 1/ with having committed in late 1974-early 1975 violations of Section 8(a)(1) of the National Labor Relations Act (the Act), for alleged coercive interrogation of employees regarding their union membership and sympathies, warnings against employee membership in Local 155 and that Respondents would not recognize or bargain with Local 155, threats of discharge if employees refused to become members of Local 318 and of discharge and closing the shop if they became or remained members of Local 155, urging and solicitation of employee card signing for and membership in Local 318, and offering to pay the union initiation fees and dues to induce employee memberships in Local 318. In addition, Respondent is charged with violations of Section 8(a)(3) and (1) of the Act for having discharged employee Arroyo at the end of January 1975, allegedly because he joined and assisted Local 155 and engaged in activities opposing Local 318. 2/

Respondent has denied commission of the alleged unfair labor practices, and has claimed that the discharge of employee Arroyo was for lawful cause.

The cases were tried in Brooklyn, New York, on June 17, 18, 19, and 20, 1975. General Counsel and Respondents have filed briefs.

Upon the entire record in the cases, including my observation of the witnesses and consideration of the briefs, I make the following:

Findings of Fact

I. Jurisdiction

Respondents, referred to as Stoll and Melange, respectively, are New York corporations. Stoll has its office and place of business at

1/ In Case 4192, the charge was filed on January 16, 1975 by the Charging Party, Local 155, followed by amended charges filed February 5, March 12, and March 25, 1975. In Case 4256, the charge was filed by Local 155 on March 12, 1975. Both cases were consolidated and a consolidated complaint was issued on April 29, 1975.

2/ The complaint, in paras. 10, 11, 12, and 13 (and related conclusionary paragraphs) also charged Respondents with violations of Section 8(a)(2) of the Act for having recognized Local 318 as bargaining representative of the employees and having entered into collective bargaining contracts with Local 318 notwithstanding Local 318 allegedly did not represent an uncoerced majority of the employees. Near the end of the second day of trial the parties presented, and I approved, a stipulation permitting General Counsel to withdraw paras. 10, 11, 12, and 13 (and the related conclusionary paragraphs) of the complaint based upon Respondent's agreement, with Local 318's concurrence, to withdraw recognition of Local 318 as bargaining representative of the employees and to set aside the collective bargaining contracts with Local 318, and to hold a consent election at an early date concerning the representation of the employees.

Bush Terminal in Brooklyn, New York, where it is engaged in the manufacture of ladies' sweaters and other knit goods and related garments, from materials supplied by and under contract with Melange.

Melange has a showroom on Broadway in New York City, and a shipping and receiving facility and office on Stoll's premises at Bush Terminal in Brooklyn. Melange is engaged in the design and sale at wholesale of ladies' sweaters and other knit goods and related garments, manufactured principally for it by Stoll and by several other contractors in the garment industry.

Since commencing operations on or about Septemper 1, 1974, Melange has sold at wholesale and distributed goods valued at an annual rate in excess of $50,000, of which products valued at an annual rate in excess of $50,000 were shipped from its places of business in New York State in interstate commerce directly to points in other states.

Since commencing operations on or about September 1, 1974, Stoll has provided sewing and cutting services as a contractor in the garment industry valued at an annual rate in excess of 0,000, of which services valued at an annual rate in excess of $50,000 were furnished principally to Melange which annually purchases goods and materials shipped to it directly from points outside New York State and annually sells at wholesale and ships goods valued in excess of $50,000 directly in interstate commerce to points outside New York State.

Viewed separately, Melange is an employer and Stoll is an employer each engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, subject, as each concedes, to the Board's jurisdiction.

However, notwithstanding the separate incorporations, Respondent Stoll is a manufacturing arm of Respondent Melange, controlled and supervised by Melange to an extent that constitutes both Respondents joint employers, if not a single employer, of the employees of both at the Bush Terminal plant. The details supporting this finding are discussed below.

Both Local 155 and Local 318 are labor organizations within the meaning of Section 2(5) of the Act, as the parties concede.

II. The Unfair Labor Practices

A. Business Operations of the Respondents

According to its secretary-treasurer and production supervisor, Peter Rossi, Respondent Melange is in the business of designing, making, and selling sweaters and other knit goods. However, said Rossi, Melange does not itself do the manufacturing but supplies a contractor with knitted yarn, and the contractor does the cutting and the sewing in the various designs, colors, and styles, and produces the finished product for Melange.

Respondent Stoll is such a contractor-manufacturer, according to Rossi, which does over fifty percent of Melange's manufacturing. Though he did not identify others, Rossi said there were also four or five other contractors who supplied manufacturing services for Melange.

At the Bush Terminal plant in Brooklyn, where Stoll and Melange began operations approximately September 1, 1974, Stoll occupies the sixth floor, and has provided space in its premises for Melange's shipping and receiving operations and office employees. 3/ Secretary-Treasurer and Production Supervisor Rossi, who tended to be evasive in supplying information, testified that he didn't know whether Melange had a lease for this space with Stoll. Later a stipulation was offered by Respondents and accepted by General Counsel that Stoll subleases part of its premises to Melange.

In the period of principal concern in this case, from about mid-November 1974 to early February 1975, Stoll had an average of fifty employees, mostly sewing machine operators and cutters, and Melange had an average of twenty-two employees, mostly engaged in packing, shipping, receiving, and bookkeeping. In this connection, according to Melange's general manager and office manager, Carmine Minichino, the bookkeepers did the bookkeeping for both companies, Stoll and Melange, and he supervised the bookkeeping for both.

There was some background evidence indicating that before commencing operations in September 1974 at Bush Terminal in Brooklyn, Peter Rossi, had been involved in a knit garment manufacturing operation under the name of Harborview, of which he was president, that had operated, until it closed in May or June 1974, at Court Street in Brooklyn; and that Local 155, which had reached a collective bargaining agreement with Harborview in March 1974, had since accused Rossi of closing Harborview and setting up the Stoll and Melange shops as a "runaway" from the Harborview collective bargaining contract. In any event, it was clear from the evidence given by employees, by Rossi, and by President Stanley Yagoda of Stoll, that Rossi was responsible for the recommending and hiring of a number of Stoll's sewing machine operators, including former Harborview employees. As President Yagoda testified, all of Rossi's recommended employees were hired.

In immediate charge of the sewing machine operators (on the Stoll payroll) was Foreman Carmelo Callari, and in immediate charge of the cutters (also on the Stoll payroll) was Foreman Herman Guzman. In overall and direct charge of the foremen, sewing machine operators, and cutters, was Production Supervisor Rossi. Stoll's President Yagoda conceded that he had given authority to Rossi, whom he described as production manager of Melange (Rossi called himself production supervisor), to come into the Stoll plant and direct the supervisors or foremen of the departments, to correct work or if something was wrong to correct the wrong, to instruct the foremen on specifications, push certain styles ahead needed for shipping, and rearrange the order of completion of work. Rossi on his part testified that he spent most of his working day at the Stoll plant and was there almost every day, that he did overseeing of the work by spot checking, that while he normally dealt with and issued his instructions to the foremen, he at times gave direct orders to cutters and operators. 4/

3/ For sales purposes, Melange has a showroom in New York City.

4/ Production Supervisor Rossi initially attempted to convey the impression that the supervision he provided at the Stoll plant was (Continued)

Stoll employees Ramonita Guzman, Roseanna Narvaez, Elva Villa, and Julia Perez, all sewing machine operators, the first two of whom were hired through Rossi, confirmed that Rossi was in charge of the shop work and in their words was "the boss," was present every day for most of the day, gave orders to and remonstrated with foremen Carmelo Callari and Herman Guzman concerning the performance of work by machine operators and cutters, and occasionally would talk directly to an operator or cutter concerning his (Rossi's) dissatisfaction with the employee's performance. Employees Guzman and Narvaez each testified to an occasion when Rossi fired an employee on the spot, in her presence--one a cutter who complained he was not getting his share of overtime (Guzman testimony), the other a machine operator who tagged garments (Narvaez testimony). Employee Narvaez further testified that in her own case, one morning not long before trial, when she came in about an hour late, Rossi told her she could not punch in before 12:30 p.m., and so instructed Foreman Callari, who repeated to Narvaez that these were the orders he had received from Rossi and she would have to report back at 12:30 p.m. if she wanted to work on that day. 5/

It is noteworthy that whereas the Stoll employees recognized Rossi as their boss, they did not accord this same recognition to Stoll's President Stanley Yagoda. Employee Villa who was hired in September 1974, identified Yagoda in the courtroom as Stanley whom she saw for the first time around Christmas 1974, and testified that he was not the boss. Employee Perez identified Yagoda in the courtroom, not by name, but as someone she had seen working in the office. She said she knew only Pete Rossi as the boss. Employee Guzman, who began employment in September 1974, testified that Rossi runs the Stoll factory, that she saw Yagoda at the Christmas 1974 party but didn't know who he was until January 14, 1975, when after being told by Foreman Callari and Rossi to sign a union card for Local 318, she was called into the office and asked by Yagoda why she hadn't signed. He told her he was the boss, that she had to sign for Local 318 or say goodbye to her job. Yagoda did not contradict her testimony.

On his part, President Yagoda testified that while he was at the shop almost every day, he spent his time in the office; that he did not take part in the hiring of employees but had the foremen handle any tryouts or observance of employees, and that all of Production Supervisor Rossi's

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4/ (Continued) typical of what he did with and for the other four or five sewing and cutting contractors who, he said, provided services for Melange, but in light of the above testimony ended up conceding that he only occasionally visited the plants of these contractors and worked out his problems with them by telephone or by their advance submission of samples.

5/ Production Supervisor Rossi did not deny his directing the discipline of employee Narvaez or the firing of the tagging machine operator, but did deny firing the cutter. However, on the latter, because of my doubt of Rossi's credibility on a number of crucial issues (supra and infra), and because the employees (here Ramonita Guzman and Narvaez) were in the vulnerable position of testifying adversely to their employer and supervisor, lending added support to their credibility, Cavender Oldsmobile Co., 181 NLRB 148, 151 (1970), I credit employee Guzman's testimony over Rossi's denial of the firing of the cutter.

recommendations for employment were hired; 6/ and, as already noted, that he had given to Rossi the authority to direct the plant work.

On the Melange side of the shop, under Rossi (who, as secretary-treasurer of Melange and production supervisor, was in overall charge) was office manager and general manager Carmine Minichino; and under Minichino was traffic manager Norris Orie, directly in charge of the shipping and receiving department. In this connection the garments made by the Stoll operators are boxed and shipped directly to the Melange customers thru the shipping and receiving department; those garments produced by any other Melange contractor are sent in bulk from the contractor to the shipping and receiving department and then boxed and shipped to customers of Melange by the shipping and receiving department.

Office Manager Minichino and Traffic Manager Orie were both salaried employees, as distinguished from the rank and file hourly paid employees, and both were on an executive medical and hospitalization plan different from the plan applicable to rank and file employees. Both claimed to have hiring and firing authority and appear to have exercised hiring authority and disciplinary authority over employees, except, of course, that Orie's authority is limited to the shipping and receiving department employees, whereas Minichino's authority covers both these employees and the office employees. In this connection, as already noted, Minichino also supervises the Stoll as well as the Melange office employees and the bookkeepers who do bookkeeping for both companies. Orie has exercised authority to recommend a wage increase for an employee and Minichino has exercised authority to grant a wage increase to an employee.

Supervisors, Joint Employers

From the foregoing facts, it is obvious (and Respondents offered no contest in their brief), that Traffic Manager Norris Orie is a supervisor within the meaning of the Act, for Melange; that Foreman Carmelo Callari, Foreman Herman Guzman, and President Stanley Yagoda, are supervisors within the meaning of the Act, for Stoll; 7/ and that Production Supervisor Peter Rossi, and Office and General Manager Carmine Minichino, are supervisors within the meaning of the Act, for Melange and Stoll.

It is also obvious (and again Respondents do not contest in their brief) that Melange and Stoll are joint employers for the purposes of the Act. Notwithstanding the trappings of separate corporations, the evidence makes plain that Stoll is a manufacturing arm of Melange, so integrated with, and controlled in its operations by, Melange thru inter-relationship of operations, common management, and centralized control of labor relations, as would even warrant a finding that together Melange and Stoll constitute a single employer let alone joint employers.

6/ Former employees of Rossi at Harborview, such as Roseanna Narvaez, were put to work without any tryout or test by the Stoll foremen.

7/ From additional facts, discussed infra, it appears that Stoll's President Yagoda has also exercised supervisory authority over Melange employees.

The Board has articulated with clarity the tests for "single employer" in 21st Annual Report NLRB (1956) 14-15, restated and approved in Sakrete of Northern California v. N.L.R.B., 332 F. 2d 902, 905-908 (C.A. 9, 1964), cert. denied 379 U.S. 961, and by the Supreme Court in Radio and TV etc. Union 1264 v. Broadcast Service of Mobile, 380 U.S. 255, 256 (1965). The ultimate question is whether the two enterprises are sufficiently integrated to consider the business of both together in applying the standards of the Act. The principle factors weighed in deciding that sufficient integration exists include the extent of (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. While none of the factors has been held to be controlling, stress has been laid upon the first three factors to show operational integration, particularly centralized control of labor relations. Id. 8/

Here, the first three factors are present. Melange and Stoll operate in a single plant (on the sixth floor of the Bush Terminal building) engaged in a unified operation of receiving knitted yarn, cutting and sewing the fabric into finished garments, packing and shipping the finished garments, and using a common office and bookkeeping staff for the paper work and billing of transactions. That Melange may get some supplemental cutting and sewing labor in the form of finished garments from other contractors does not alter the basic Melange-Stoll arrangement. Indeed, the additional garments from other contractors are fed into the receiving, packing, and shipping operation that is part of the Melange-Stoll operation.

Production Supervisor Peter Rossi, physically as well as organizationally in charge of production for both Melange and Stoll, provides common management for the combined operation, along with Office and General Manager Carmine Minichino, who, under Rossi, provides common management of the combined or, more accurately, single office force.

Centralized control of labor relations is also in the hands of Production Supervisor Peter Rossi, who is also Melange's Secretary-Treasurer. He appears to control hirings, firings, and discipline, of the combined labor force and the evidence provided examples of his exercise of all three of these functions. In addition, as will appear hereinafter, at a shop meeting of the combined work forces called by Rossi, he told the employees they had to join Local 318, stated he would pay their union initiation fees and dues, and threatened non-signers for

8/ See the recent review of the Board and court cases in Operating Engineers v. N.L.R.B. (Peter Kiewit Sons' Co.), F. 2d , 90 LRRM 2321, 2323-2324 (C.A.D.C., September 1975), pointing out, among other things, that the finding of single employer does not require that all four of the controlling criteria be present; and that interrelationship of operations, or centralized control of labor relations, or common management, only at the executive or top level is sufficient for application of the single employer concept.

Local 318 with discharge and that he would close the shop if Local 155 became the representative of the employees. 9/

The fourth factor used in single employer determinations--common ownership or financial control of the two enterprises--does not appear here from the evidence submitted. While, as already stated, the Board has been articulate in its description of the tests for "single employer," it does not appear to have set down with particularity distinguishing tests for "joint employers." The cases reflect a great similarity in the controlling ingredients for either finding, although frequently the factor of common ownership is absent as between "joint employers." Because there is an absence of evidence of common ownership between Melange and Stoll, or financial control by Melange of Stoll, I am inclined to find that the two are joint employers rather than a single employer (though the finding of single employer would be justified from the three ingredients present that do result in an integrated operation). Compare, Hamburg Industries, Inc., 193 NLRB 67, 67-68 (1971), where a contractor for railroad car repair (Hamburg) and the supplier to Hamburg of the work force including supervisors (Fidelity), who also supplied labor to another firm, but maintained its hiring office on Hamburg's premises, were held to be joint employers of the employees engaged in the railroad car maintenance and refurbishment, in view of Hamburg's control over Fidelity's operations in areas of work instructions, quality control, right to reject finished work, work scheduling, and indirect control over wages. 10/

B. The Unfair Labor Practices

1. Organizing by Local 155

Local 155's director of organizing, Norman Lewis, testified, without contradiction, that Local 155 had a collective bargaining contract with Harborview, a Brooklyn sewing shop on Court Street, in which Peter Rossi was the president and principal participant; that Harborview closed its operations at Court Street in May or June 1974; and that shortly thereafter many of the sewing machines and employees of Harborview turned up in the Stoll-Melange Brooklyn operation at Bush Terminal, in which Rossi is a principal participant. In August 1974, Union Organizer Lewis sought out Rossi at his new location, and,

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9/ The role of Stoll's president and sole stockholder, Yagoda, in the management or in labor relations was somewhat shadowy from the evidence. He testified only to certain matters in limited fashion and there was a stipulation on his behalf as to certain other matters. In any event, it was established that he did not participate in the hiring of the Stoll machine operators and cutters, he was responsible for the hiring of one Melange employee (Heerapersaud), he had nothing to do with the supervision of the Stoll production operations (having delegated this authority to Rossi), and that in office meetings with individual employees of Stoll and Melange he backed up Rossi's insistence that the employees must join Local 318 or be discharged.

10/ It should be clear, however, that though the finding is that Melange and Stoll are joint employers, rather than a single employer, the responsibility of both for violations of the Act, and for remedial action thereon, are the same, N.L.R.B. v. Gibraltar Industries, 307 F. 2d 428, 429-431 (C.A. 4, 1962), cert. denied 372 U.S. 911.

among other things, expressed the view that the union contract was still in existence and if there was a disagreement it should be arbitrated. Lewis accused Rossi of setting up the Stoll-Melange operation as a "runaway" from Local 155's collective bargaining contract with Harborview. Rossi told Union Organizer Lewis that he didn't want to have anything to do with Local 155. In December 1974, Union Organizer Lewis sought unsuccessfully to talk again with Rossi. Lewis then got in touch, outside the plant, with several of the Melange and Stoll employees—Nelson Arroyo, Ramonita Guzman, and others--and gave them Local 155 authorization cards for signing and distribution among their fellow employees. Employees Arroyo and Guzman testified to signing Local 155 cards in December and distributing other cards to the employees for signing, and Union Organizer Lewis testified to receiving signed authorization cards from employees beginning about mid-December.

Other Local 155 organizers, Quinonas and De Angelis, participated in organizing activities outside the plant, distributing union leaflets and cards. Stoll President Yagoda testified to seeing Union Organizer Quinonas right after New Year's Day (January 1, 1975) distributing union leaflets and asking him for one and receiving in addition Quinonas' business card. Quinonas testified that Yagoda also told him and De Angelis that they were trespassing in making their distribution, and that Respondents already had a union--Local 318.

2. Respondents' Countermeasures

Respondents countered Local 155's organizing campaign among the employees with an in-plant drive in January 1975 to obtain card signatures from the employees for Local 318.

On the Stoll side of the plant, employees Villa and Perez testified that their immediate supervisor, Foreman Carmelo Callari, stood at the entrance to the sewing machine department on the morning of January 8 and handed them, and other employees reporting for work, cards for Local 318, and told them to sign, saying that Local 318 was the union to which the factory belonged. Employees Villa and Perez testified that they signed and returned the cards to Foreman Callari. Their testimony was not disputed.

On the Melange side of the plant, employee Heerapersaud testified that his immediate supervisor, Traffic Manager Norris Orie, asked him to sign a card for Local 318, and he did. When he asked Orie where was the collective bargaining contract, Orie told him they would have it in a few weeks. Heerapersaud's testimony was not disputed.

Two employees, Nelson Arroyo and Nicholas Vargas, who worked in packing and shipping on the Melange payroll, initially resisted Traffic Manager Orie's importuning that they sign membership cards for Local 318 (this was about mid-January). When Orie insisted that they had to sign and they still refused, Production Supervisor Rossi was called in and Orie pointed them out as the two employees who would not sign for Local 318. Rossi ascertained that this was so and took them to the office where Stoll President Yagoda was present. Rossi asked again why they had not signed up for Local 318. The two employees said they didn't like or didn't want that union. Production Supervisor Rossi told them if they didn't sign they would

have to look for work elsewhere. President Yagoda told them that Local 318 was a good union, that he was paying $100 for the union book (the initiation fee) and that the employees had nothing to pay, and that if they did not sign the cards for Local 318 they would have to leave their jobs. Both employees signed. 11/

About noon on January 8, 1975, Production Supervisor Rossi called a plant meeting of all employees of Stoll and Melange (testimony employees Villa, Narvaez, Perez). Rossi told the employees that Local 318 was the union to which the factory belonged, that a contract had already been signed, that there were good benefits, that he would take care of all of the union books (initiation fees) and dues, but that anyone not in agreement who did not join Local 318 would be fired. He handed Local 318 cards to Foreman Callari which Callari distributed immediately following the meeting. In employee Villa's case the card she had signed in the early morning was given back to her to complete, and she did. Employee Narvaez, who had not signed as yet, was given a blank card to complete. She asked Foreman Callari if she had to sign now, he said yes, and she complied. 12/

In the following week, on January 16, Production Supervisor Rossi called and conducted another plant meeting of employees of Melange and Stoll (testimony employees Villa, Perez, and Guzman, who had been absent and missed the plant meeting of the previous week). Rossi told the employees he did not know why they were signing cards for Local 155, that they belonged to Local 318 and could not sign for two unions, and that anyone who signed for a union other than Local 318 could look for another job. He repeated that he would pay for the dues and book for Local 318, but said that if Local 155 got into the factory, he would close the shop.

11/ The testimony of the two employees was not contradicted by Yagoda, Rossi, or Orie, except that Rossi suggested that employees Arroyo and Vargas came into the office on their own accord to ask if Melange belonged to Local 318; but then he couldn't remember if they asked, or he told them. This was typical of the evasive testimony of Rossi, and in this instance it was also contrary to the tenor of the testimony of Traffic Manager Orie, and not worthy of belief. Yagoda, who testified only partially, did not testify respecting this meeting. In lieu of testimony on the subject he provided a stipulation that if he had testified he would say that he did not state that he or Stoll would pay the employee initiation fees, or $100 per book, to Local 318. I do not regard this untested assertion as sufficient evidence to contradict the contrary testimony of the employees. Moreover, Rossi, who was present at the meeting, did not offer support of the substance of the stipulation but was silent on the subject in his testimony; indeed, made no effort to deny a similar statement on absorbing union fees and dues attributed to him at the contemporaneous general plant meetings, discussed infra.

12/ Perez, Narvaez, Ramonita Guzman, and other employees testified that they paid no dues or initiation fees to Local 318.

Two days prior to the plant meeting of January 16, on January 14, while employee Ramonita Guzman was at work, Foreman Callari handed her a Local 318 card to sign. She said she would read it. Callari called Production Supervisor Rossi and shortly thereafter President Yagoda appeared and asked employee Guzman to accompany him to the office. In the office Yagoda asked Guzman why she would not sign the card for Local 318. Guzman replied she had to read it first. Yagoda asked if she had signed a card for Local 155. Guzman said no (though she had signed such a card in December, see supra). Yagoda then said that everyone had signed for Local 318 and if she refused to sign the Local 318 card it was "bye, bye," and he made a gesture indicating the waving of good-bye. Guzman answered, she would sign tomorrow. Yagoda sent her back to work. Next day she gave Foreman Callari a signed card for Local 318.

A third plant meeting of Stoll and Melange employees was held in the following week (testimony employees Villa and Guzman). President Yagoda and Production Supervisor Rossi were present, and a representative of Local 318 (Olivieri) was introduced. He spoke and, among other things, told the employees that the employer had signed a contract with the union, and described the hospital and other benefits of the contract.

None of the testimony concerning the plant meetings or employee Guzman's private meeting with President Yagoda was disputed, except that Production Supervisor Rossi claimed that he spoke only at one of the plant meetings to clarify the confusion between Local 318 and Local 155. He also claimed that he spoke because some of the girls asked him to explain; then he changed his story to say that the foremen stopped the machines and asked him to speak to the Stoll and Melange employees about the union. There was no support from anyone, or from any other evidence, for Rossi's claim. In the face of the clear contrary testimony of the employees, 13/ it is my view that Rossi was again evading the giving of the whole truth. 14/

3. Discharge of Employee Arroyo

The Events

Edward Nelson Arroyo worked in the packing and shipping department, on the Melange payroll, beginning in October 1974. He had previously worked at another Brooklyn plant, in charge of the shipping department, and was hired for Respondents by Traffic Manager Norris Orie at $2.60 per hour. On January 13, 1975, with Orie's approval, Office

13/ Entitled to added support for the reason set out in note 5, supra.

14/ Rossi's credibility was further impeached in testimony he gave respecting employee Narvaez. He testified he observed her coming late, every day, after 9 a.m. Starting time was 8:30 a.m. After being confronted with her timecards for the period, week ending October 19, 1974 thru week ending June 7, 1975 (exhibit GC-4), he conceded that the records reflect she came in only a very few times after 9 a.m. and only a few more times after the starting time of 8:30 a.m.

Manager Minichino gave employee Arroyo a pay raise to $3 per hour. Approximately two weeks later, Arroyo was discharged.

As already noted under the preceding headings, employee Arroyo was an active supporter of Local 155, who signed a card for Local 155 in December and solicited other signatures among fellow employees. As also noted, shortly after January 13, employee Arroyo openly resisted the demands of Traffic Manager Orie, Production Supervisor Rossi, and President Yagoda that he sign up with Local 318, and gave in only after being threatened in an office interview with discharge. At the plant meeting of employees and management thereafter, where Local 318's agent Olivieri spoke, when Olivieri commented that Local 155 was engaging in illegal organizing, employee Arroyo spoke up with a counter-comment on the illegality of the employer taking an employee into the office and forcing him to sign for Local 318 on penalty of discharge if he did not sign.

On the following Monday morning, before work started, employee Arroyo met and conversed with Local 155 organizer Quinonas in the downstairs area in front of the plant. Production Supervisor Rossi came by, saw them, and went on (Rossi knew Quinonas, as did President Yagoda who met him in early January, supra). Employee Arroyo worked that day, January 27, and the following day, Tuesday, January 28 (see exhibit R-4, Arroyo time cards, week ending February 1, 1975). On Wednesday, January 29, when Arroyo reported to work his time card was not in the rack. 15/ He testified that he sought out Traffic Manager Orie, who told

15/ At trial, employee Arroyo was confused as to the date, testifying to discharge on the prior Wednesday, January 22; but the confusion came about innocently, because Union Agent Quinonas had previously but mistakenly written down January 22, as a memorandum, and Arroyo had relied on the notation as accurate. Arroyo also testified, correctly, that he did not work on Tuesday, January 21 (see exhibit R-4, time card week ending January 25, 1975) which he had also described as the day before he was fired (thinking, erroneously, that January 22 was the discharge date). Arroyo testified that he had not worked that Tuesday because he had gone, with Office Manager Minichino's advance permission, to Kennedy Airport to pick up a cousin from Puerto Rico. Arroyo had planned to be back at work by noon, but his car broke down as he left the airport and sometime before noon he called Minichino to tell of his plight and that he couldn't get back for work that day. Minichino testified that, though he believed employee Arroyo when he called in to say his car had broken down, it was this absence which was the cause of Arroyo's discharge. Minichino could not remember on what day the absence had occurred (it could have been a Tuesday, Wednesday, or Thursday, he said), or the date. However, after being reminded by Respondent's counsel that Tuesday, January 28, was Arroyo's last day of actual work, Minichino concluded that the incident and absence had occurred on the following day, Wednesday, January 29. From other events relating to the discharge, discussed infra, I am inclined to believe that the absence occurred on Tuesday, January 21, eight days before the discharge. Nonetheless if the absence occurred on Wednesday, January 29, and Arroyo found his time card removed from the rack on Thursday morning, January 30, the result in the case is the same.

him Pete (Rossi) said he was fired. According to Arroyo, Orie told him that an order had been packed wrong, and when Arroyo suggested what might have happened (that involved others) and that the matter required looking into, Orie said he could do nothing, Arroyo had already been fired. Arroyo waited around for an hour or more hoping to see and talk with either Rossi or Minichino, but neither had arrived by the time he left.

According to employee Arroyo, on the following Friday, pay day, he came back to the plant into the office for his pay. Office Manager Minichino gave him his check (and conceded at trial that he did), and President Yagoda asked Arroyo if he was one of the men trying to bring Local 155 into the shop. Arroyo said yes, and Yagoda commented that Local 318 was the only union in the shop and no other union would get in. Arroyo then left. Neither Yagoda nor Minichino contradicted this testimony.

The Defense

Respondents contended that in December 1974, following Christmas, it fired employee Arroyo for making mistakes in his packing, then rehired him for a special job just before mid-January 1975, and fired him again at the end of January for three reasons: improper performance of duties, continual absence after warning, and continual lateness after warning (see Respondents' Answer, exhibit GC-1n, para. 8).

The alleged first firing at the end of December turned out to be a temporary layoff, in the packing and shipping department, of employees Arroyo and Vargas, because of a temporary slowdown in business in the post-Christmas - early New Year period. Office Manager Minichino told Arroyo to call in daily for work, and Traffic Manager Orie told Vargas the same thing. Both men testified that they complied, and Vargas was called back in the week ending January 11, 1975, and Arroyo was called back on January 13 and given a wage increase of forty cents an hour. Orie's and Minichino's contention that Orie had fired Arroyo two weeks earlier for making mistakes is not credible particularly since Orie admitted that he approved the January pay raise granted by Minichino.

On recall, Arroyo was given a special job for the first several days. It comprised opening boxes of merchandise returned by customers and assisting Minichino in the giving of appropriate credits. The boxes had piled up before Arroyo started on them, but he cleared most of them out in about four days and then went on a schedule of dealing with returns in the mornings and packing new merchandise for shipment in the afternoons (testimony Arroyo, Vargas). 16/

While he conceded that he was on the premises almost every day, for most of the day, Production Supervisor Rossi claimed that he didn't know

16/ Traffic Manager Orie, who claimed at one point that employee Arroyo worked only on returns in January and that he (Orie) did not directly supervise this work, unwittingly tripped himself up by also asserting that Arroyo continually made mistakes, in packing, in January, thus corroborating the employees' testimony that Arroyo worked both on returns and packing.

employee Arroyo was fired around the end of January and that he found out that Traffic Manager Orie and Office Manager Minichino took care of that.

On his part, Traffic Manager Orie testified that though employee Arroyo was making mistakes in packing all the time, during January, he (Orie) did not fire him and did not speak to Office Manager Minichino of having a problem with Arroyo, but that Office Manager Minichino on his own fired Arroyo at the end of January without telling Orie why. On the evening of the day Arroyo was fired, said Orie, Minichino told him he had fired Arroyo for making a mistake but did not tell him what the mistake was. Orie added that he did not know what, if anything, Arroyo was doing wrong or could be doing wrong in connection with the work on the returns.

Office Manager Minichino testified that employee Arroyo performed his work satisfactorily until the time that Minichino discharged him; and that he discharged Arroyo because Arroyo failed to come in to work on the day he went to the airport, and telephoned that his car was stuck on the parkway and couldn't come in, discussed in note 15, supra. Phrasing it another way, Minichino said, it was Arroyo's absence on that day, and not the way he performed his work, that was the cause of discharge.

However, Minichino testified that when Arroyo telephoned him that his car had broken down, he believed Arroyo, and did not reprimand him or tell him he was discharged, only told him to come talk to Minichino next day. And, continued Minichino, when he saw Arroyo at the plant the next day, though he had decided (without telling him) that Arroyo was discharged, he passed Arroyo by without conversation and never did face him with the charge of having been absent or that he was fired, even though, said Minichino, it was against his principles to discharge an employee without facing him or to discharge him by telling him so on the telephone. Yet days later, though Arroyo was no longer working, Minichino claimed that he told Arroyo on the telephone he was fired, a telephone conversation Arroyo denied ever having with Minichino.

This testimony by Office Manager Minichino has all the earmarks of a manufactured story. It also suggests that Arroyo's absence from work to go to the airport occurred on Tuesday, January 21 (not Wednesday, January 29), see note 15, supra, that the absence had been allowed by and was acceptable to Minichino when it occurred a week before discharge, and that it was dredged up as an alleged cause for discharge only after the necessity to find a cause arose later.

In this connection it is pertinent to note that, as the case moved through the testimony of Respondents' witnesses, Respondents abandoned their three original alleged reasons for discharge of employee Arroyo (viz., improper performance of duties, continual absence after warning, continual lateness after warning) and shifted to this new alleged reason, his absence one day.

4. Section 8(a)(1) and (3) findings

The evidence summarized under heading B2 portrays gross violations of Section 8(a)(1) of the Act by Respondents' management, in plant meetings and meetings with individual employees, including solicitation of employees' signing of cards for the union that Respondents

favored, Local 318, and offers to pay Local 318's initiation fees and dues to induce employees to embrace membership in Local 318; coercive interrogation of employees concerning their interest in or signing cards for the union not favored by Respondents, Local 155; warning employees against membership in Local 155 and that Respondents would not recognize or bargain with Local 155; and threats to employees of discharge if they refused to become members of Local 318, and of discharge and closing the shop if they became or remained members of Local 155. See, N.L.R.B. v. Revere Metal Art Co., 280 F.2d 96, 99-100 (C.A. 2, 1960), cert. denied 364 U.S. 894, on solicitation of union memberships by employer's representatives; Dixie Bedding Mfg. Co. v. N.L.R.B., 268 F.2d 901, 906 (C.A. 5, 1959), on payment of union initiation fees and dues by employer; N.L.R.B. v. Rubin, 424 F.2d 748, 750 (C.A. 2, 1970), on coercive interrogation 17/ and threats of layoff and shutdown; and N.L.R.B. v. Fitzgerald Mills Corp., 313 F.2d 260, 268-269 (C.A. 2, 1963), cert. denied 375 U.S. 834, on warnings that the employer would not sign a contract with union and threats against employees' jobs.

The evidence summarized under heading B3 is a case of retaliatory discharge by Respondents of employee Arroyo because of his opposition to union Local 318, which union Respondents favored and urged upon the employees, and because of his espousal of union Local 155, which union Respondents openly opposed.

Without notice or warning of any shortcoming in his work or conduct, approximately two weeks after he had been given a wage increase and added work responsibility, Arroyo was informed by his immediate supervisor, Traffic Manager Orie, on January 29, 1975, that he had been fired by the boss, Production Supervisor Rossi, allegedly for making a mistake in packing, without identifying the mistake.

17/ It is noteworthy that Respondents' citations, to demonstrate the proposition that all interrogation of employees by the employer regarding a union is not per se unlawful, were cases where the interrogation was found to be coercive, in violation of Section 8(a)(1) of the Act, and in support of the findings here: N.L.R.B. v. Varo, 425 F.2d 293, 298 (C.A. 5, 1970), holding the questioning of employees regarding the union, in the office, by a high ranking company officer, without explanation of the purpose or assurances against retaliation, was coercive and violated Section 8(a)(1); N.L.R.B. v. Armstrong Circuit, Inc., 462 F.2d 355 (C.A. 6, 1973), holding that the manager singling out employees and questioning them about rumors of union activity, and whether they had joined the union, was coercive interrogation in violation of Section 8(a)(1); and N.L.R.B. v. C and P Plaza Dept. Store, 414 F.2d 1244 (C.A. 7, 1969), cert. denied 396 U.S. 1058, holding that employer polling of employees on whether they wanted a union by show of hands, preceded by statement that no one had to vote if he didn't want to, was coercive in violation of Section 8(a)(1) because the employer obviously asked for a negative vote and the poll had a chilling effect by identifying those who were prounion.

However, Traffic Manager Orie claimed at trial that he didn't know why employee Arroyo was fired, and neither Production Supervisor Rossi, nor Office Manager Minichino (who at trial assumed responsibility for the firing), ever faced Arroyo with the fact of, or reason for, his discharge.

At trial, Respondent contended there were three reasons for Arroyo's discharge (poor work performance, continual lateness, and continual absence), but abandoned these reasons after Office Manager Minichino testified that Arroyo's work performance had been satisfactory and that a single absence had been the reason for his discharge. However the single absence, originally a half-day, for which Minichino's advance permission was obtained, that became a full day when Arroyo had a mishap with his car and notified Minichino, was accepted at the time by Minichino as a valid excused absence without criticism or reprimand of Arroyo by Minichino. It was brought up at trial as the cause for discharge, as though it had not been excused, but employee Arroyo was not informed of it when discharged, indeed Minichino admitted avoiding a confrontation with Arroyo when he was discharged.

The evidence, and the manner of its unfolding, suggests that Office Manager Minichino as the loyal subordinate of top management, Production Supervisor Rossi and President Yagoda, was simply attempting to provide and shoulder for his superiors an excuse to cover their real reason to be rid of employee Arroyo. Arroyo, as an active supporter of Local 155, had initially resisted Rossi's and Yagoda's efforts to have him sign for Local 318, gave in under threat of discharge, but then openly criticized them, before all the employees in a plant meeting, for coercing him and others to sign for Local 318. Thereafter Rossi saw Arroyo consorting with an organizer of the opposing union, Local 155, in front of the plant. Respondents' real purpose in firing Arroyo was to discourage further employee adherence to Local 155, and President Yagoda confirmed this when Arroyo was given his final paycheck, telling him that Local 155 would never get into the plant.

Given Respondents' open hostility to Local 155, the shifting reasons for employee Arroyo's discharge, N.L.R.B. v. Georgia Rug Mill, 308 F.2d 89, 91 (C.A. 5, 1962), and the obvious pretext of the final alleged reason, strengthen the conclusion that Respondents' true reason was to be rid of an advocate for Local 155 and to discourage further activity and support for Local 155 among the employees, N.L.R.B. v. Ulbrich Stainless Steels, 393 F.2d 871, 872 (C.A. 2, 1968); McGraw Edison Co. v. N.L.R.B., 419 F.2d 67, 75-76 (C.A. 8, 1969).

The discharge of employee Arroyo was in violation of Section 8(a)(3) and (1) of the Act.

Conclusions of Law

1. Respondents engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by soliciting membership of its employees in union Local 318 and offering to pay the union initiation fees and dues to induce their signing for such membership, by coercively interrogating employees concerning their interest in or signing cards for union Local 155, by warning employees against membership in union

Local 155 and that Respondents would not recognize or bargain with Local 155, and by threatening employees with discharge if they refused to become members of Local 318 and with discharge and closing the shop if they became or remained members of Local 155.

2. Respondents engaged in further unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by discharging employee Arroyo, because he opposed union Local 318 and espoused union Local 155, and in order to discourage employee activity and support for Local 155.

3. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

In connection with the unfair labor practices, it will be recommended that the Respondent

(1) cease and desist from its unfair labor practices;

(2) offer to reinstate employee Edward Nelson Arroyo with backpay from the time of discharge, backpay to be computed on a quarterly basis as set forth in F. W. Woolworth Co., 90 NLRB 289 (1950), approved in N.L.R.B. v. Seven-Up Bottling Co., 344 U.S. 344 (1953), with interest at six percent per annum as provided in Isis Plumbing & Heating Co., 138 NLRB 716 (1962), approved in Philip Carey Mfg. Co. v. N.L.R.B., 331 F.2d 720 (C.A. 6, 1964), cert. denied 379 U.S. 888;

(3) post the notices provided for herein; and

because the Respondent violated fundamental employee rights guaranteed by Section 7 of the Act, and because there appears from the manner of the commission of this conduct an attitude of opposition to the purposes of the Act and a proclivity to commit other unfair labor practices, it will be further recommended that the Respondent

(4) cease and desist from in any manner infringing upon the rights guaranteed by Section 7 of the Act. N.L.R.B. v. Entwistle Mfg. Co., 120 F.2d 532, 536 (C.A. 4, 1941); P. R. Mallory and Co. v. N.L.R.B., 400 F.2d 956, 959-960 (C.A. 7, 1968), cert. denied 394 U.S. 918; N.L.R.B. v. Bama Company, 353 F.2d 323-324 (C.A. 5, 1965).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, there is hereby issued the following recommended: 18/

18/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondents, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Soliciting membership of their employees in union Local 318.

(b) Offering to pay union initiation fees or dues for their employees in union Local 318 as an inducement for their becoming members of the union.

(c) Coercively interrogating their employees concerning their interest in or signing cards for union Local 155.

(d) Warning their employees against membership in union Local 155 and that Respondents will not recognize or bargain with Local 155.

(e) Threatening their employees with discharge if they refuse to become members of union Local 318.

(f) Threatening their employees with discharge or closing the shop if they become or remain members of union Local 155.

(g) Discharging employees because they engage in or support union activities.

(h) Discouraging employees from support of or membership in union Local 155 or other labor organization by discharge or other discrimination affecting their tenure or conditions of employment.

(i) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Make employee Edward Nelson Arroyo whole, in the manner set forth in the section of the decision entitled "The Remedy," for any loss of earnings incurred by him as a result of his discharge on January 29, 1975.

(b) Offer to employee Arroyo immediate and full reinstatement to his former job, or if the job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(c) Preserve, and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to ascertain the backpay due under the terms of this Order.

(d) Post in the plant at Bush Terminal, Brooklyn, New York, copies of the attached notice marked "Appendix." 19/ Immediately upon receipt of said notice, on forms to be provided by the Regional Director for Region 29 (Brooklyn, New York), the Respondent shall cause the copies to be signed by one of its authorized representatives and posted, the posted copies to be maintained for a period of sixty consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 29, in writing, within twenty days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated at Washington, D. C.

Herzel H.E. Plaine
Administrative Law Judge

19/ In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

DECISION AND ORDER (Dated March 15, 1976)

FPW

223 NLRB No. 11

D--974
Brooklyn, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

STOLL INDUSTRIES, INC.

and

Case 29--CA--4192

KNITGOOD WORKERS UNION LOCAL 155, INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL--CIO

and

LOCAL 318, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AFL--CIO

Party to the Contract

MELANGE SPORTSWEAR INC.

and

Case 29--CA--4256

KNITGOOD WORKERS UNION, LOCAL 155, INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL--CIO

and

LOCAL 318, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL--CIO

Party to the Contract

DECISION AND ORDER

On November 13, 1975, Administrative Law Judge Herzel H. E. Plaine issued the attached Decision in this proceeding. Thereafter, the Respondents filed

exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Stoll Industries, Inc., Brooklyn, New York, and Melange Sportswear Inc., Brooklyn, New York, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. MAR 15 1976

John H. Fanning, Member

John A. Penello, Member

Peter D. Walther, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

ORDER CONSOLIDATING CASES, CONSOLIDATING COMPLAINT AND NOTICE OF HEARING (Dated April 29, 1975)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

STOLL INDUSTRIES, INC.

and

KNITGOOD WORKERS UNION LOCAL 155, INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO

Case No. 29-CA-4192

and

LOCAL 318, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

Party to the Contract

MELANGE SPORTSWEAR INC.

Case No. 29-CA-4256

and

KNITGOOD WORKERS UNION, LOCAL 155, INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO

and

LOCAL 318, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

Party to the Contract

ORDER CONSOLIDATING CASES, CONSOLIDATING COMPLAINT, AND NOTICE OF HEARING

It having been charged by Knitgood Workers Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO, herein called Local 155, in Case No. 29-CA-4192 that Stoll Industries, Inc., herein called Respondent Stoll, and in Case No. 29-CA-4256 that

Melange Sportswear, Inc., herein called Respondent Melange, and both Respondent Stoll and Respondent Melange sometimes hereinafter collectively called Respondents, have engaged in, and are engaging in, certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, et seq., hereinafter called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15 hereby issues this Consolidated Complaint, and Notice of Hearing and alleges as follows:

1. (a) The Charge in Case No. 29-CA-4192 was filed by Local 155 on January 16, 1975, and served by registered mail upon Respondents and upon Local 318, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, herein called Local 318, on or about January 16, 1975.

(b) The First Amended Charge in Case No. 29-CA-4192 was filed by Local 155 on February 5, 1975, and served by registered mail upon Respondents and upon Local 318, on or about February 5, 1975.

(c) The Second Amended Charge in Case No. 29-CA-4192 was filed by Local 155 on March 12, 1975 and served by registered mail upon Respondent Stoll and upon Local 318, on or about March 12, 1975.

(d) The Third Amended Charge in Case No. 29-CA-4192 was filed by Local 155 on March 25, 1975 and served by registered mail upon Respondent Stoll and upon Local 318 on or about March 25, 1975.

2. The Charge in Case No. 29-CA-4256 was filed by Local 155 on March 12, 1975 and served by registered mail upon Respondent Melange and upon Local 318, on or about March 12, 1975.

3. (a) Respondent Stoll is, and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein Respondent Stoll has maintained its principal office and place of business at 33 35th Street, in the Borough of Brooklyn, City and State of New York herein called the Bush Terminal plant, where it is, and has been at all times material herein, engaged in the manufacture of sweaters and other knitgoods and related products, as a contractor in the garment industry, principally for Respondent Melange.

(c) Since commencing operations, on or about September 1, 1974, Respondent Stoll, in the course and conduct of such business operations, has performed and provided sewing and cutting services as a contractor in the garment industry at its Bush Terminal plant, valued at the annual rate of in excess of $50,000, of which services valued at the annual rate of, in excess of $50,000, were furnished principally to Respondent Melange and to other enterprises located in New York State, each of which enterprises annually purchases goods and materials which are shipped to it directly from other enterprises, located outside the State of New York, or annually produces goods valued in excess of $50,000 which it ships directly out of the State wherein said enterprise is located.

4. (a) Respondent Melange is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Respondent Melange has maintained its principal office and place of business at 1411 Broadway, in the City and State of New York and a shipping and receiving facility at 33 35th Street, in the Borough of Brooklyn, City and State of New York, herein called the Bush terminal plant where it is, and has been at all times material herein, engaged in the wholesale distribution and sale of ladies sweaters, dresses and other knitgoods garments and related products manufactured principally for it by Respondent Stoll, and by other contractors in the garment industry.

(c) Since commencing operations on or about September 1, 1974, Respondent Melange, in the course and conduct of its business operations, sold and distributed at wholesale at its places of business, products valued at the annual rate of in excess of $50,000, of which products valued at the annual rate of in excess of $50,000 were shipped from said places of business, including the Bush Terminal plant, in interstate commerce directly to states of the United States other than the State of New York.

5. Respondent Stoll and Respondent Melange are, and at all times material herein have been, joint employees of Respondent Stoll, and the employees of Respondent Melange, formulating and administering a common labor policy, affecting said employees.

6. Respondents, and each of them, are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

7. (a) Local 155 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(b) Local 318 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

8. (a) Stanley Yagoda, is, and has been at all times material herein, the president of Respondent Stoll, acting on its behalf, and an agent of Respondents.

(b) Carmelo Callari is, and has been at all times material herein, an agent of Respondents, acting on their behalf,

and a supervisor of Respondent Stoll within the meaning of Section 2(11) of the Act.

9. (a) Peter Rossi is, and has been at all times material herein, an officer of Respondent Melange, acting on its behalf, and an agent of Respondents.

(b) Norris Oric and Carmine Minchino are, and have been at all times material herein, agents of Respondents, acting on their behalf, and supervisors of Respondent Melange within the meaning of Section 2(11) of the Act.

10. (a) On or about September 30, 1974, Respondent Stoll and Local 318 executed an agreement whereunder, Respondent Stoll recognized Local 318 as the collective bargaining representative of its employees.

(b) Respondent Stoll and Local 318 executed, and thereafter maintained in effect and enforced the aforesaid agreement, as described above in sub-paragraph (a), notwithstanding the fact that Local 318 was not at the time of the execution thereof, nor at any time thereafter, duly designated or selected as their collective bargaining representative by a majority of the employees covered by such agreement, and/or notwithstanding the fact that Local 318 did not at the time of the execution thereof, nor at any time thereafter, represent an uncoerced majority of the employees covered by said agreement.

11. (a) On or about November 1, 1974, Respondent Stoll and Local 318 executed and since that date have maintained and

enforced a collective bargaining agreement relating to the hire, tenure and other terms and conditions of employment of the employees of Respondent Stoll, whereunder, inter alia, Respondent Stoll recognized Local 318 as the collective bargaining representative of its employees in a unit consisting of all production and maintenance employees, machinists, shipping, receiving employees and truck drivers employed at the Bush Terminal plant, exclusive of office clerical employees, professional employees, salesmen, guards and supervisors as defined by the National Labor Relations Act.

(b) The agreement described above in sub-paragraph (a) contains inter alia, provisions which require membership in good standing in Local 318 as a condition of employment and tenure of employment.

(c) Respondent Stoll and Local 318 executed, and thereafter maintained in effect and enforced the aforesaid agreement, as described above in sub-paragraphs (a) and (b) notwithstanding the fact that Local 318 was not at the time of the execution thereof, nor at any time thereafter, duly designated or selected as their collective bargaining representative by a majority of the employees covered by such agreement; and/or notwithstanding the fact that Local 318 did not at the time of the execution thereof, nor at any time thereafter, represent an uncoerced majority of the employees covered by said agreement.

12. (a) On or about September 30, 1974, Respondent Melange and Local 318 executed an agreement whereunder, Respondent Melange recognized Local 318 as the collective bargaining representative of its employees.

(b) Respondent Melange and Local 318 executed, and thereafter maintained in effect and enforced the aforesaid agreement, as described above in sub-paragraph (a), notwithstanding the fact that Local 318, was not at the time of the execution thereof, nor at any time thereafter, duly designated or selected as their collective bargaining representative by a majority of the employees covered by such agreement; and/or notwithstanding the fact that Local 318 did not at the time of the execution thereof, nor at any time thereafter, represent an uncoerced majority of the employees covered by said agreement.

13. (a) On or about November 1, 1974, Respondent, Melange and Local 318 executed and since that date have maintained and enforced a collective bargaining agreement relating to the hire, tenure and other terms and conditions of employment of the employees of Respondent Melange, whereunder, inter alia, Respondent Melange recognized Local 318 as the collective bargaining representative of its employees in a unit consisting of all production and maintenance employees, machinists, shipping, receiving employees and truck drivers employed by Respondent Melange, exclusive of office clerical employees, professional employees, salesman, guards and supervisors as defined by the National Labor Relations Act.

(b) The agreement described above in sub-paragraph (a), contains inter alia, provisions which require membership in good standing in Local 318 as a condition of employment and tenure of employment.

(c) Respondent Melange and Local 318 executed, and thereafter maintained in effect and enforced the aforesaid agreement, as described above in sub-paragraphs (a) and (b) notwithstanding the fact that Local 318 was not at the time of the execution thereof, nor at any time thereafter, duly designated or selected as their collective bargaining representative by a majority of the employees covered by such agreement; and/or notwithstanding the fact that Local 318 did not at the time of the execution thereof, nor at any time thereafter, represent an uncoerced majority of the employees covered by said agreement.

14. On or about January 6, 1975, January 14, 1975 and January 24, 1975 and on various other dates presently unknown during the months of December, 1974 and January, 1975, Respondents, by their agents and officers, Stanley Yagoda, president of Respondent Stoll, and Peter Rossi, secretary-treasurer of Respondent Melange, and by other agents and supervisors presently unknown, at the Bush Terminal plant, interrogated their employees concerning the employees' membership in, activities on behalf of, and sympathy in and for Local 318 and Local 155.

15. On or about January 8, 1975, January 16, 1975 and on various other dates presently unknown during the months of January

and February, 1975 Respondents, by Peter Rossi, secretary-treasurer of Respondent Melange, and their agent, and by other agents and supervisors presently unknown, at the Bush Terminal plant, warned and directed their employees to refrain from becoming or remaining members of Local 155 and to refrain from giving any assistance or support to it, and warned their employees that Respondents would never recognize and bargain with Local 155, as their representative for purposes of collective bargaining.

16. On or about January 6, 1975, January 8, 1975, January 14, 1975, January 16, 1975 and on various other dates presently unknown during the months of January and February, 1975, Respondents, by their agents and officers, Stanley Yagoda, president of Respondent Stoll, and Peter Rossi, secretary-treasurer of Respondent Melange, and by other agents and supervisors presently unknown, at the Bush Terminal plant, threatened their employees with discharge and that they would close the Bush Terminal plant, and threatened said employees with other reprisals if they refused to become or remain members of Local 318, and if they refused to give any assistance and support to it; and if they became or remained members of Local 155, and if they gave any assistance and support to it.

17. On or about December 20, 1974, January 6, 1975, January 8, 1975, January 14, 1975 and January 16, 1975, and on

various dates presently unknown during the months of December 1974, January and February, 1975 Respondents, by their agents and officers, Stanley Yagoda, president of Respondent Stoll, and Peter Rossi, secretary-treasurer of Respondent Melange, by their agents and supervisors, Carmello Callari, supervisor of Respondent Stoll, and Norris Oric and Carmine Minichino, supervisor and manager, respectively, of Respondent Melange, and by other agents and supervisors presently unknown, at the Bush terminal plant, distributed and urged and solicited their employees to sign cards designating Local 318 as their representative for collective bargaining purposes; and urged and solicited their employees to join Local 318.

18. On or about January 6, 1975 and January 16, 1975, and on various other dates presently unknown during the months of December, 1974 and January 1975, Respondents, by their agents and officers, Stanley Yagoda, president of Respondent Stoll, and Peter Rossi, secretary-treasurer of Respondent Melange, and by other agents and supervisors presently unknown, at the Bush Terminal plant, offered to pay to Local 318, on behalf of their employees and without reimbursement from them, sums of money as their initiation fees and dues which such labor organization required as a condition of membership therein; in order to induce said employees to become or remain members of Local 318 and to assist and support said labor organization.

19. On or about January 22, 1975, Respondents discharged their employee, Edward Nelson Arroyo, a packer in the shipping department employed by Respondent Melange at the Bush Terminal plant.

20. Since the date of the discharge of the employee, as described above in paragraph 19, Respondents have failed and refused to reinstate, or offer to reinstate, said employee to his former, or substantially equivalent, position of employment.

21. Respondents discharged, and thereafter failed and refused to reinstate their employee, Edward Nelson Arrayo, as described above in paragraphs 19 and 20, because said employee joined and assisted Local 155, and engaged in activities in opposition to Local 318 and because said employee engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.

22. By the acts described above in paragraphs 10 through 21, and by each of said acts, Respondents interfered with, restrained and coerced, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

23. By the acts described above in paragraphs 10 through 21 and by each of said acts, Respondents rendered, and are rendering

unlawful assistance and support to a labor organization, and contributed and are contributing financial and other support to a labor organization, and thereby engaged in, and are engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(2) and Section 2(6) and (7) of the Act.

24. By the acts described above in paragraphs 11, 13, 19, 20 and 21, and by each of said acts, Respondents discriminated, and are discriminating, in regard to the hire and tenure and terms and conditions of employment of their employees, thereby encouraging membership in one labor organization, and discouraging membership in another labor organization, and thereby engaged in, and are engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

25. The acts of Respondents described above in paragraphs 10 through 21, occurring in connection with the operations of Respondents, described above in paragraphs 3 through 6, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 10th day of June, 1975 at 10 a.m., at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, in the City and State of New York and consecutive days thereafter until concluded, a hearing will be conducted before

a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before The National Labor Relations Board in Unfair Labor Practice, Cases, is attached.

You are further notified that, prusuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondents shall each file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless they do so all the allegations in the Consolidated Complaint shall be deemed to be admitted by them to be true and may be so found by the Board. Immediately upon the filing of their answers; Respondents shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 29th day of April, 1975.

Samuel M. Kaynard,
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

BEST COPY AVAILABLE

ANSWER OF PETITIONER MELANGE (Dated May 12, 1975)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

STOLL INDUSTRIES, INC.

AND Case No. 29-CA 4192

KNITGOOD WORKERS UNION LOCAL 155,
INTERNATIONAL LADIES' GARMENT
WORKERS UNION, AFL-CIO

AND

LOCAL 318, INTERNATIONAL BROTHERHOOD
OF PULP, SULPHITE AND PAPER MILL
WORKERS, AFL-CIO

Party to the Contract

MELANGE SPORTSWEAR INC.

AND Case No. 29-CA-4256

KNITGOOD WORKERS UNION, LOCAL 155,
INTERNATIONAL LADIES' GARMENT
WORKERS UNION, AFL-CIO

AND

LOCAL 318, INTERNATIONAL BROTHERHOOD
OF PULP, SULPHITE AND PAPER MILL
WORKERS, AFL-CIO

Party to the Contract

MELANGE SPORTSWEAR INC., answering the consolidated complaint by its attorney, LOUIS C. PULVERMACHER, respectfully alleges:

1. DENIES the allegations contained in Paragraph "5", "15", "16", "17", "18", "19", "20", "21", "22", "23".

2. DENIES so much of the allegations contained in Paragraphs "8.(a)" and "8.(b)" as allege that STANLEY YAGODA is or was an agent of MELANGE and CARMELO CALLARI, is or was an agent of Melange.

3. DENIES so much of the allegations contained in Paragraph "9.(a)" as alleges that Peter Rossi is or was an agent of Respondent MELANGE.

4. DENIES so much of the allegations contained in Paragraph "9.(b), as alleges that NORRIS ORIC and CARMINE MINCHINO acted as agents of Respondent STOLL.

5. DENIES so much of the allegations of Paragraph "10.(b) as alleges that Local 318 did not represent a majority of the employees covered.

6. DENIES so much of the allegations contained in Paragraph "10.(c)" as alleges that Local 318 did not represent a majority of the employees or represent an uncoerced majority of the employees covered.

7. DENIES so much of the allegations of Paragraph "14" as alleges that STANLEY YAGODA, President of Respondent STOLL, interrogated Melange employees with respect to Local 155.

AS AND FOR AN AFFIRMATIVE DEFENSE WITH RESPECT TO THE ALLEGATIONS RELATING TO EDWARD NELSON ARROYO

8. Said employee was not an employee of Respondent MELANGE.

Dated: New York, N.Y.
May 12, 1975

LOUIS C. PULVERMACHER
Attorney for Melange Sportswear, Inc.
410 Park Avenue
New York, N.Y. 10022

TO:

SAMUEL M. KAYNARD,
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

SHELDON FOGELMAN, ESQ.
10 East 40th Street
New York, N.Y. 10016

LOCAL 318, United Paper Workers Union
920 Second Avenue
New York, N.Y.

Knitgoods Workers' Union,
Local 155
International Ladies Garment Workers
Union, AFL-CIO
519 8th Avenue
New York, N.Y.

LIEBERMAN, ARONSON & ROSENBERG, ESQS.
Attention - Marshall Rosenberg
1501 Broadway
New York, N.Y.

ANSWER OF PETITIONER STOLL (Dated May 12, 1975)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

STOLL INDUSTRIES, INC.

AND

Case No. 29-CA-4192

KNITGOOD WORKERS UNION LOCAL 155,
INTERNATIONAL LADIES' GARMENT
WORKERS UNION, AFL-CIO

AND

LOCAL 318, INTERNATIONAL BROTHERHOOD
OF PULP, SULPHITE AND PAPER MILL
WORKERS, AFL-CIO

Party to the Contract

MELANGE SPORTSWEAR INC.

AND

Case No. 29-CA-4256

KNITGOOD WORKERS UNION, LOCAL 155,
INTERNATIONAL LADIES' GARMENT
WORKERS UNION, AFL-CIO

AND

LOCAL 318, INTERNATIONAL BROTHERHOOD
OF PULP, SULPHITE AND PAPER MILL
WORKERS, AFL-CIO

Party to the Contract

STOLL INDUSTRIES, INC., answering the consolidated complaint by its attorney, LOUIS C. PULVERMACHER, respectfully alleges:

1. DENIES the allegations contained in Paragraph "5", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24" and "25".

2. DENIES so much of the allegations contained in Paragraph "8(a)" and "8(b)" as allege that STANLEY YAGODA is or was an agent of MELANGE and CARMELO CALLARI is or was an agent of MELANGE.

3. DENIES so much of the allegations contained in Paragraph "9(a)" as alleges that PETER ROSSI is or was an agent of RESPONDENT STOLL.

4. DENIES so much of the allegations contained in Paragraph "9(b), as alleges that NORRIS ORIC and CARMINE MINCHINO acted as agents of Respondent Stoll.

5. DENIES so much of the allegations of Paragraph "10.(b) as alleges that Local 318 did not represent a majority of the employees covered.

6. DENIES so much of the allegations contained in Paragraph "10.(c) as alleges that Local 318 did not represent a majority of the employees or represent an uncoerced majority of the employees covered.

7. DENIES so much of the allegations of Paragraph "14" as alleges that STANLEY YAGODA, President of Respondent Stoll, interrogated MELANGE employees with respect to Local 155.

AS AND FOR AN AFFIRMATIVE DEFENSE WITH RESPECT TO THE ALLEGATIONS RELATING TO EDWARD NELSON ARROYO

8. Said employee was discharged for cause consisting of improper performance of duties and continual absence and lateness after warning.

9. Said employee had been discharged, was re-hired and again discharged for cause.

Dated: New York, N.Y.
May 12, 1975

LOUIS C. PULVERMACHER
Attorney for Stoll Industries, Inc.
410 Park Avenue
New York, N.Y. 10022

TO: SAMUEL M. KAYNARD,
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

SHELDON FOGELMAN, ESQ.
10 East 40th Street
New York, N.Y. 10016

LOCAL 318, United Paper Workers Union
820 Second Avenue
New York, N.Y.

Knitgoods Workers' Union,
Local 155
International Ladies Garment Workers
Union, AFL-CIO
519 8th Avenue
New York, N.Y.

LIEBERMAN, ARONSON & ROSENBERG, ESQS.
Attention - Marshall Rosenberg
1501 Broadway
New York, N.Y.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

STANLEY YAGODA, being duly sworn, deposes and says:-

Deponent is the President of STOLL INDUSTRIES, INC., one of the corporations named in the within action, deponent has read the foregoing answer to the consolidated complaint and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

Sworn to before me this
12th day of May, 1975

LOUIS C. PULVERMACHER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-3173015
Qualified in New York County
Commission Expires March [illegible]

JA45

GENERAL COUNSEL'S EXHIBIT I (O)

LOUIS C. PULVERMACHER, P.C.
ATTORNEY AT LAW
410 PARK AVENUE
NEW YORK, N.Y. 10022

212 PLAZA 8-8001

May 29, 1975

National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York
11241

Stoll Industries, Inc.
Melange Sportswear)
Case Nos. 29-CA 4192,4256

Attention: Alvin Blyer, Esq.

Dear Mr. Blyer:-

In reviewing the answer filed by Melange Sportswear, Inc., I inadvertently omitted reference to Paragraph "12" and "13". You were kind enough to suggest I file a letter with you amending Paragraph "1" to read as follows:-

DENIES the allegations contained in Paragraphs "5", "12", "13", "15", "16", "17", "18","19", "20", "21", "22", "23", "24" and "25".

Very truly yours,

LCP/rr

JA48

RESPONDENT'S EXHIBIT 4

Natl Labor Relations Bd

Off by R-4

Received

6/18/75 - HC

Change Ship

Elbe Arroyo

PAY PERIOD ENDING 11/2

10/19

	RATE	AMOUNT	F.I.C.A.	CITY W.T.	NUMBER OF EXEMPTIONS
	RATE	AMOUNT	FED. W.T.	BONDS	TOTAL EARNINGS
		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

OT 1½						
4.050				ER 9 11	SA 9 01	
3				4		
					4½	
12 00				1 33		
12 80				ER 1 27	SA 1 31	
3½				3½		
				ER 5 01		
5 00						
7				7		14
½				½	4½	5½ OT

1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Hourly Rate

THE HOURS SHOWN IS CORRECT.

O. 3514 Signature

BEST COPY AVAILABLE

W/E

PAY PERIOD ENDING 10/26

No. NAME Eddie Arroyo

S.T. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	GROSS EARNINGS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	HOURS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

	TU 8 18	TU 8 25	WE 8 32	TH 8 03	FR 8 24	SA 8 45	
	3½		3½	4	4	3½	
	IN 12 03		IN 12 05	IN 12 01			
	IN 12 25		IN 12 29	IN 12 23	IN 12 30	SA 12 33	
					IN 12 59		
	4		4	4	3		
	IN 4 31	IN 1 02	IN 4 31	IN 4 34	IN 4 06		
	7½	8	7½	7½	7	3½	41
		8			7		7
	½	1	½	½			6

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT.

Signature

Mileage Slip — PAY PERIOD ENDING 11/2/74 — W/E

No. Name Eddie Carnage

B.T. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	NUMBER OF EXEMPTIONS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONDS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

	≡8 00	≡8 51	≡8 26	≡8 07	[illegible]	≡8 39	
	3½	3	3½		3½	4	
	≡12 02	12:00	≡12 04	[illegible]	12:00		
	12:30	12:30	≡12 30		[illegible]	SA 12 31	
	4	3½	3½	5½	3½		
				≡1 53			
			≡4 00				
	≡4 30	≡4 02			≡4 02		
	7½	6½	7	5½	7	4	37½
	7	6½	7	5½	7		33
	½					4	4½
							[illegible]
	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT.

Signature

No. 53141 CINCINNATI TIME, 937 BROADWAY, N. Y. C. - GR 7-6030

BEST COPY AVAILABLE

W/C

PAY PERIOD ENDED 11/9/74

Mclaney

No. NAME Eddie Arroyo

REG. HOURS	DATE	AMOUNT	FED. W.T.	CITY W.T.	TOTAL EARNINGS
O.T. HOURS	DATE	AMOUNT	STATE W.T.	SOCIAL SEC.	TOTAL DEDUCTIONS
HOURS		AMOUNT	STATE DIS.		BALANCE DUE
			STATE U.C.		

W 8 19 E 8 37 R 8 19

3½ 3½ 3½

W 12 02 E 12 01 12

12 01 E 12 23 12

3½ 4 3½

W 4 01 E 4 30 R 4 02

7	7½	7					21
7	7	7					21
	½						½

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Working Hours
Date								

TOTAL HOURS SPECIFIED IS CORRECT. Signature

No. 85141 CINCINNATI TIME, 937 BROADWAY, N. Y. C. - GR 7-6930

MELANGE SPORTSWEAR, INC.

PAY PERIOD ENDED 4/6 "/16/74

No.
NAME Eddie Arroyo

R.T. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	GROSS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	NOSS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

9:30

	≥8 26	≥8 22	≥8 21	≥8 22	≥8 07		
	3½	3½	3½	3½	3½		
	≥12 04	≥12 00	≥12 02	≥12 00	≥12 01		
	≥12 24	≥12 26	≥12 28	≥12 28	≥12 24		
	4	3½	4	4	3½		
		≥1 00					
	≥4 31		≥4 30	≥4 33	≥4 02		
	7½	7	7½	7½	7		36½
	7	7	7	7	7		35
	½		½	½			1½
				≥8 [illegible]			

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	TOTAL HOURS
Daily Totals								36½

TOTAL HOURS SHOWN IS CORRECT.

No. 03141

Signature

CINCINNATI TIME RECORDER 907 BWAY NYC GR7-5980

2. Corduroy C/E

MELANGE SPORTSWEAR, INC. PAY PERIOD ENDING 11/23

No. NAME Estelle Arroyo

R.T. HOURS	DATE	AMOUNT	F.I.C.A.	CITY W.T.	TOTAL EARNINGS
O.T. HOURS	DATE	AMOUNT	FED. W.T.	BONDS	TOTAL DEDUCTIONS
HOURS		AMOUNT	STATE W.T.		BALANCE DUE
			STATE DIS.		
			STATE U.C.		

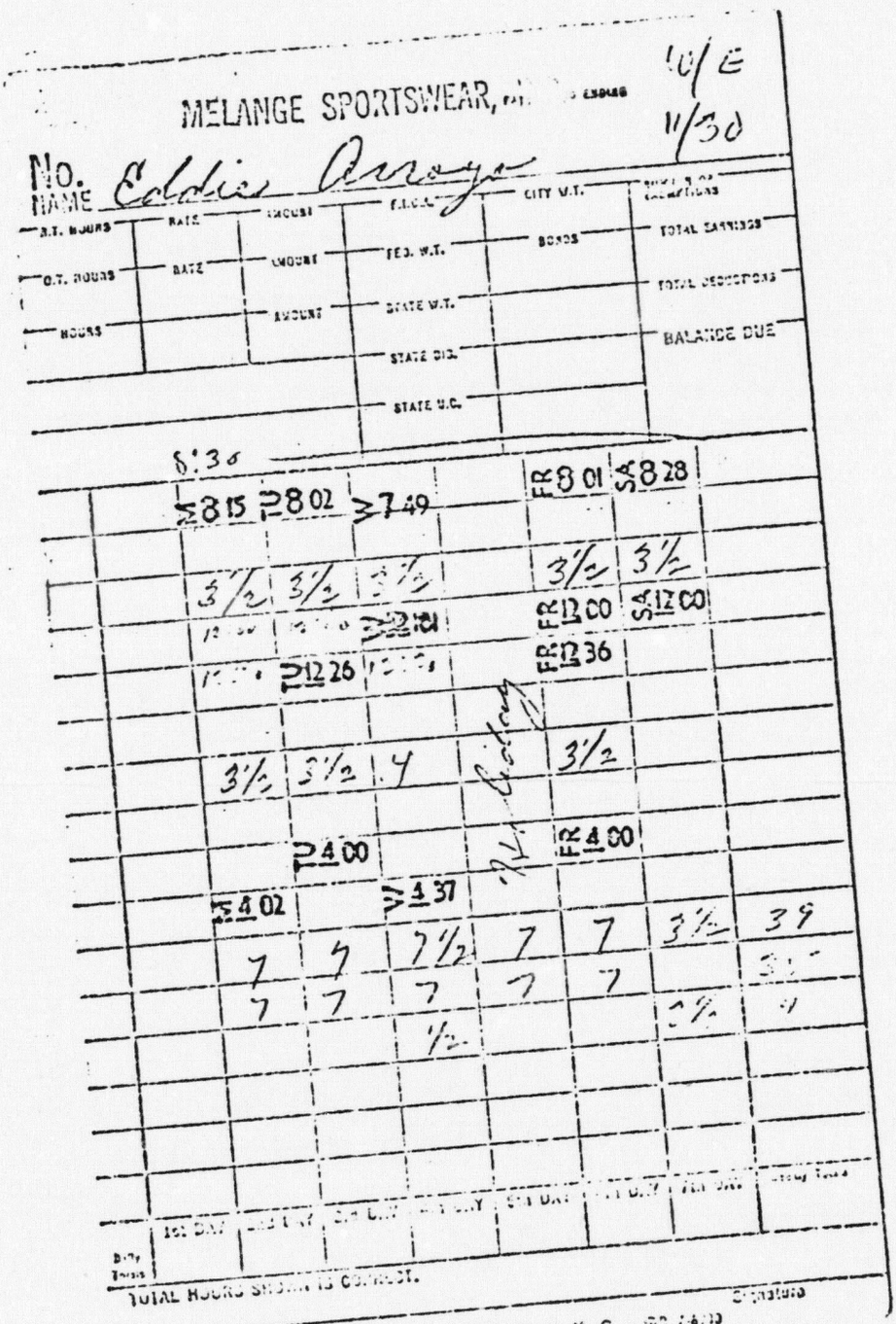
	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	
	M 8 25	T 8 11	W 8 29	TH 8 29	FR 8 25			
	3 1/4	3	3 1/2	3 1/2	3 1/2			
	12:00	12 02	[illegible]	TH 12 02	FR 12 00			
	12:00	12:00	W 12 22	TH 12 28	FR 12 22			
	4 1/4	4	5 1/2	3 1/2	4 3/4			
			4:00	TH 4 00				
	M 5 21	T 4 29			FR 5 15			
	5 1/4	7 1/2	7	7	8 1/4			34
	7	7	7	7	7			35
	1 1/4	1/2			1 1/4			3
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT.

Signature

FORM 3014S

CINCINNATI TIME, 927 BROADWAY, N. Y. C. - GR 7-4[illegible]



MELANGE SPORTSWEAR, [illegible]

10/E
11/30

No.
NAME Eddie Arroyo

REG. HOURS	RATE	AMOUNT	FICA	CITY W.T.	TOTAL EARNINGS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONDS	TOTAL DEDUCTIONS
HOURS		AMOUNT	STATE W.T.		BALANCE DUE
			STATE DIS.		
			STATE U.C.		

8.30

M 8 15	T 8 02	W 7 49		FR 8 01	SA 8 28	
3½	3½	3½		3½	3½	
		M 2 [illegible]		FR 12 00	SA 12 00	
	T 12 26			FR 12 36		
3½	3½	4	Sidney	3½		
	T 4 00			FR 4 00		
M 4 02		W 4 37				
7	7	7½	7	7	3½	39
7	7	7	7	7		31
		½			3½	4

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	TOTAL HOURS
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT. SIGNATURE

No. 65141 CINCINNATI TIME, 77 BROADWAY, N. Y. C. - GR 7-6133

W/C

MELANGE SPORTSWEAR INC. PAY PERIOD ENDING 12/7/74

No. NAME Catalin Arsenyan

REG. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	NUMBER OF DEDUCTIONS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONDS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

9:30 5:45 8:30 3:30

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Hours Total
	M 8 23	M 8 35		TH 8 04	FR 8 23			
	3½	3¼		3½	3½			
	M 12 09	TU 12 01	W 12 15	TH 12 00	FR 12 00			
		TU 12 26		TH 12 31	FR 12 40			
					FR 12 59	¼		
	3½	3½	3¾	3½				
		M 4 00	M 4 00	M 4 00				
	M 4 00							
Daily Totals	7	6¾	3¾	7	3¾			25½

TOTAL HOURS SHOWN IS CORRECT.

Signature

FORM 0011 CINCINNATI TIME, 997 BROADWAY, N. Y. C. - GR 7-[illegible]

MELANGE SPORTSWEAR 1st PAY PERIOD ENDING

C/G

12/14/74

NO.
NAME Sabrina Ramirez

REG. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	NUMBER OF EXEMPTIONS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONDS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
						FR 8 12		
		HOURS	H 9 00	H 9 33	H 8 00			
		H 10 47	2	2¼	2	3½		
		H 12 01	H 12 01	H 12 01	H 12 00	FR 12 00		
		H 12 30	H 12 30	H 12 30	H 12 30	FR 12 36		
			1½			3½		
		H 4 00	H 4 00	H 4 00		FR 4 00		
					H 5 00			
Daily Totals		4½	5½	5¼	6½	4½		29

TOTAL HOURS SHOWN IS CORRECT.

Signature

FORM 86141

CINCINNATI TIME, 307 BROADWAY, N. Y. C. - GR 7-6733

CJ/C

MELANGE SPORTSWEAR, INC. PAY PERIOD ENDING 12/21/74

No.
NAME Eddie Arroyo

R.T. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	GROSS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONUS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Total Hours
		M 8 14	T 8 08			FR 8 03		
		3½	2½			3½		
		M 12 00	T 12 00			FR 12 02		
		M 12 30	T 12 30			FR 12 36		
		3½	2½			3½		
			T 8 08					
		M 4 00	T 3 04					
						FR 4 01		
Daily Totals		7	6		7	7		27

TOTAL HOURS SHOWN IS CORRECT.

Signature

FORM D614A

CINCINNATI TIME, 937 BROADWAY, N. Y. C. - GR 7-5748

MELANGE SPORTSWEAR, INC. PAY PERIOD ENDING 12/25/74

No.
NAME Eddie Arroyo

REG. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	NUMBER OF EXEMPTIONS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	CODE	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

$8 32

$12 00
$12 30

$4 00

	1st. DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	WEEK TOTALS
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT.

No. 03181 _____ Signature

CINCINNATI TIME RECORDER 907 B-RAY N/C 08?-6980

W E
1/4/75

PAY PERIOD ENDING

MELANGE SPORTSWEAR INC.

No.
NAME Edisa Arroyo

REG. HOURS	DATE	AMOUNT	F.I.C.A.	CITY W.T.	
O.T. HOURS	DATE	AMOUNT	FED. W.T.	BONDS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT.

No. 00141

Signature

CINCINNATI TIME, 907 BROADWAY, N. Y. C. - GR 7-6900

W/E 1/11/74

MELANGE SPORTSWEAR, INC. PAY PERIOD ENDING

No. NAME Eddie Arroyo

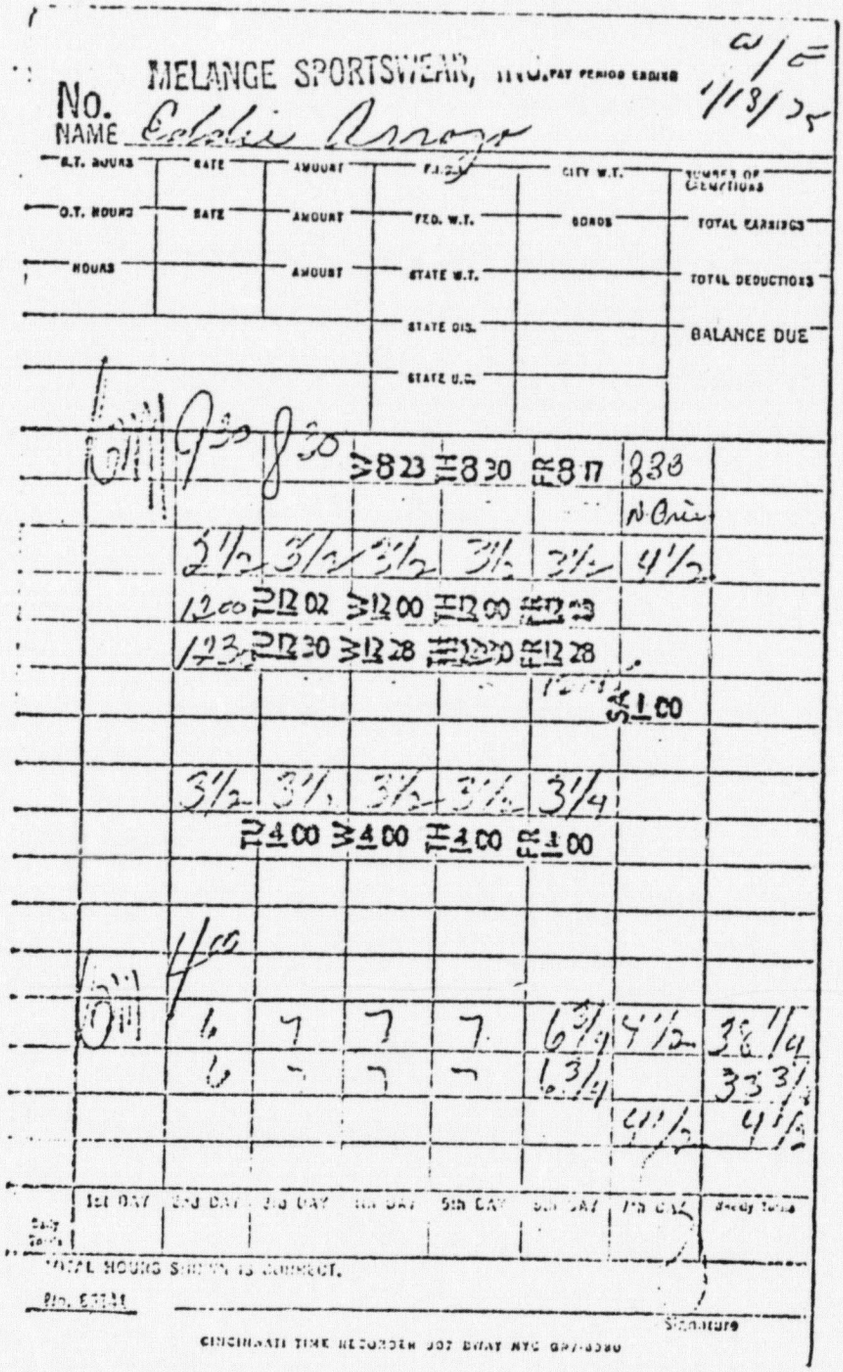
S.T. HOURS	RATE	AMOUNT	FED. W.T.	CITY W.T.	NUMBER OF EXEMPTIONS
O.T. HOURS	RATE	AMOUNT	STATE W.T.	BONDS	TOTAL EARNINGS
HOURS		AMOUNT	STATE DIS.		TOTAL DEDUCTIONS
			STATE U.C.		BALANCE DUE

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT. Signature

FORM 56141

CINCINNATI TIME RECORDER 507 BWAY NYC GR7-6330



MELANGE SPORTSWEAR, INC. PAY PERIOD ENDED 1/18/25

No.
NAME Edelin Arroyo

REG. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	NUMBER OF EXEMPTIONS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONDS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

			W 8 23	T 8 30	F 8 17	8 33	
						N Chrg	
	3½	3½	3½	3½	3½	4½	
	12 00	T 12 02	W 12 00	T 12 00	F 12 23		
	1 23	T 12 30	W 12 28	T 12 20	F 12 28		
						$24 00	
	3½	3½	3½	3½	3¼		
		T 4 00	W 4 00	T 4 00	F 4 00		
	4 00						
	6	7	7	7	6 3/4	4½	38 1/4
	6	7	7	7	6 3/4		33 3/4
						4½	4½

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT.

Rec. $ 24 00

Signature

CINCINNATI TIME RECORDER 207 BWAY NYC GR7-3380

w/e 1/25/13

MELANGE SPORTSWEAR PAY PERIOD ENDED

No. NAME Eddie Garcia

REG. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	NUMBER OF EXEMPTIONS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONUS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

	8 23		8 17	TH 8 07	FR 8 13		
	3½		3½	3½	3½		
	12 00		D 12 00	TH 12 00	FR 12 00		
	12 23		12 25	TH 12 26	FR 12 28		
			3½	3½	3½		
			4 00		4 00		
				TH 4 01			
	8½		7	7	7		21½

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT.

FORM 86141 Signature

CINCINNATI TIME RECORDER 907 BWAY NYC 687-6280

MELANGE SPORTSWEAR, INC.

W/E 2/11/5-

NO.
NAME Cecilia Ruano

R.T. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	GROSS OF EXEMPTIONS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONDS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
		IN 8 28	OUT 3 26					
		3 1/2	3 1/2					
		IN 12 CO	OUT 12 CO					
		IN 12 28	OUT 12 24					
		3 1/2	3 1/2					
		IN 4 CO	OUT 4 CO					
		7	7					14

Daily Totals

TOTAL HOURS SHOWN IS CORRECT.

FORM 86141 Signature

CINCINNATI TIME RECORDER 907 BWAY NYC GR7-6980

MELANGE SPORTSWEAR, INC.

PAY PERIOD ENDING 2/8/75

No. 41/6

NAME Colette Arroyo

R.T. HOURS	RATE	AMOUNT	F.I.C.A.	CITY W.T.	NUMBER OF EXEMPTIONS
O.T. HOURS	RATE	AMOUNT	FED. W.T.	BONDS	TOTAL EARNINGS
HOURS		AMOUNT	STATE W.T.		TOTAL DEDUCTIONS
			STATE DIS.		BALANCE DUE
			STATE U.C.		

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY	Weekly Totals
Daily Totals								

TOTAL HOURS SHOWN IS CORRECT.

NO. 86141 _____ Signature

C.T.R. DISTRIBUTOR 907 BWAY N.Y.C. GR 7-6980

RESPONDENT'S EXHIBIT 5 (First Four Pages)

State of New York

County of Kings ss

Nelson Arroyo, being duly sworn, deposes and says:

I live at 639 Union St. B'klyn, N.Y. I have no telephone.

¶1] I started working for Melange Sportswear, Inc. about the end of September or the beginning of October. I worked as a packer in the shipping department at Melange. I was earning $2.60 per hour and two weeks before my dismissal, I received a raise to $3. because I asked Carmine for it ., who I think is in charge of the shipping department but worked in the office. When I sought work at Melange, Pete Rossi interviewed me first and then Pete Rossi told me to talk with Norris, a foreman, and Pete told Norris to take me. Pete Rossi also is the person that tells the men in the shipping department what they should do.

¶2] During sometime in the beginning of January, Norman Lewis and Alex Quinones, came to the sixth floor of the building in which I was working and stayed outside the gate of the factory. I was working very near the gate, and they started to talk to me and asked me if there was a union there; I told them there wasn't. Then they told me to come downstairs to talk with them if I wanted a good union. At 11:30, I had to bring some boxes downstairs and I spoke with the two men from Local 155. They gave me about 25 or 30 cards from the union and I spoke with them for 15 or 20 minutes. Then I went upstairs and gave some cards to Ramonita and kept some. I gave the cards to Ramonita Guzman in the back part of the factory in the cutting section. No boss nor supervisor noticed what we were doing

at the time that we were doing it. After the union gave me the cards, I started giving out the cards in the back part in the cutting section during lunch time. No supervisor ever said anything to me about my giving out the cards. I recall that I gave cards to Luis Martinez, Nicolas Vargas, Jova____, Marta____, Olga____, and Gladys.__., and others whose names I don't recall. Some of these people returned the cards to me and some returned the signed cards to Ramonita. I don't remember who gave cards to whom. About three days after I got the cards, I signed my card and returned my card and other cards to Ramonita.

¶3] During January, after I signed the card for Local 155, Norris_____, a foreman, gave out Local 318 cards to me, to Nicolas Vargas and Luis Martinez. When Norris gave us the cards, he told us to sign them. We three said that we weren't going to sign. When Norris tried to give us the cards, we did not take them. We kept working and Norris entered the office. A short time later, when we were working and Norris was there, Pete Rossi came and I heard him tell Norris, " Which are the men that don't want to sign?" Norris pointed to me and Nicolas Vargas. Then Pete told us to come to the office. Vargas and I entered the office. Present in the office were Pete, Vargas, Stanley, and I. In the office, Pete put the cards on the table and asked us why we didn't want to sign the cards. Vargas and I said that we didn't want the union. Then Pete said that if we didn't sign the cards, we had to go. Then Stanley said that the union had a lot of benefits, that it was a good union and that he was going to pay for the union book worth $100. and we did not have to pay anything. Then, since Pete told us that if we did not sign we had to go, I and Vargas signed the cards.

Then we went back to work.

¶4] About a week after signing the card for 318, a man that said he was the union 318 delegate came and held a meeting of all the employees present. I attended this meeting. The union diegate spoke about the benefits and said that it would not be good for us to put in union 155 because that was against the law because Local 318 was already there. Then I told him in English, " Isn't it against the law if a boss speaks to a worker in the office and tells him that he has to sign a card or be fired?" He did not answer me because many people started talking to him. I then left.

¶5] Two days before I was fired, I was downstairs speaking with the 155 delegate, Quinones, when Pete Rossi passed by there and looked at us.

¶6] The day before my dismissal, it was a Tuesday, I did not go to work. Tuesday night, my friend Vargas, told me outside my home that there was a prbblem with an order that Tuesday.

¶7] Wednesday, when I came to work, my card wasn't in the rack. When I saw that my card wasn't there, I asked Norris why my card wasn't there. He told me that Pete had said that I was fired. Then I went to the office to talk with Pete. He did not come, and I waited two hours and left.

¶8] Friday of the same week, I returned to the factory for my check. Carmine gave me the check and said nothing to me. Then Stanley who was there in the office asked me if I was one of the men that wanted to put in the other union and I told him yes. Stanley told me, " You know that here we only have Local 318 and do other union is going to be put in here." Then I left.

¶9] Last week, the week of March 10th, I returned to the factory and spoke with Pete in the office and told him that I wanted my Income Tax papers. He have them to me and said nothing to me.

¶10] In December, Norris and Carmine told me that I had done a bad order. I don't recall if it was my order or if something was done badly. I think that this was the only other time that they spoke to me about my work. I never came in late to work. During the entire period that I was working there, I was out two or three times, and I always called the company before being out.

¶11] In December, when Norris spoke to me about the bad order, he told me that if it happened again, the company was going to fire me.

¶12] My last contact with the company was the day that I got my Income Tax papers.

¶13] No boss told me anything else about the unions besides what I said here. I know that Luis_____ was fired because of errors in December 1974.

I have read this statement of 5 pages, and I swear it is true,

Eddie Nelson Arroyo

Subscribed and sworn to before me this 19th day of March 1975,

Paulette T. Slavinskas

Board Agent

PETITIONER'S BRIEF IN OPPOSITION (Considered as Exceptions)
(Received December 10, 1975)

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

STOLL INDUSTRIES, INC.

and

KNITGOOD WORKERS UNION LOCAL 155, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

and

LOCAL 318, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

Party to the Contract

Case No. 29-CA-4192

MELANGE SPORTSWEAR INC.

and

KNITGOOD WORKERS UNION, LOCAL 155, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

and

LOCAL 318, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO

Party to the Contract

Case No. 29-CA-4256

BRIEF IN OPPOSITION TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

LOUIS C. PULVERMACHER
Attorney for Respondents
410 Park Avenue
New York, N.Y. 10022

MELANGE SPORTSWEAR, INC., is a vendor of women's sweaters and contracts to others for production. STOLL INDUSTRIES, INC., sews the garments from knitted goods provided by MELANGE. STOLL'S entire plaint is in the Bush Terminal Building, Brooklyn, New York. Melange maintains its shipping department in the same premises.

STOLL INDUSTRIES, INC. (STOLL) and MELANGE SPORTSWEAR, INC. (MELANGE) files exceptions to so much of the Administrative Law Judge's decision as determines that "The discharge of employee ARROYO was in violation of §8(a)(3) and (1) of the Act,"1* at a time when both STOLL and MELANGE had existing union agreements with Local 318, International Brotherhood of Pulp, Sulphite And Paper Mill Workers.

The discharge of ARROYO was for cause.

The decision is replete with contradictions, tortured reasoning, evasions of testimony and proceeds on the theory of discrediting and impugning the veracity of Respondents' witnesses, while finding facts concerning which the General Council's own witnesses could not and did not offer testimony.

The decision bears little reality to the record of testimony in arriving at its conclusion. There is no substantial testimony to support the conclusion.

*1 Decision of Herzel H.E. Plaine,
Administrative Law Judge
P. 16 - Line 15-16.

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Of the seven employees of STOLL or MELANGE called by the General Council, only ARROYO was discharged. In fact, one witness was a union organizer for Local 155, at the time of the hearing.

ARROYO began working for MELANGE (he never worked for STOLL) in late September or early October 1974, in the packing and shipping department (274*) at which time there were five people in the department (304) of whom four testified. ARROYO'S job was to check the garments selected by the pickers against the order for size and style (309) and to pack them. Prior to Christmas ARROYO was reproached for errors and the entire department was also lectured and threatened with discharge for further packing errors (561,358).

NORRIS ORRIE, who was ARROYO'S supervisor, (305, 559) spoke to ARROYO about the mistakes and testified he did not "think he (ARROYO) could have worked out ... he was packing wrong, the wrong styles, the wrong sizes. I realized that EDDIE (ARROYO) was packing the boxes wrong. I took all the number two copies that he had packed, checked it against the orders, and I finally realized that he packed them wrong. That's the only way I could know that he was packing them wrong." (561)

VARGAS one of the employees and a friend of ARROYO testified that he had been told there was trouble with ARROYO'S work shortly before he was fired and that ORRIE had said that ARROYO had made a serious error (460). Another of ARROYO'S errors was discovered the day after

ARROYO was fired (461). VARGAS was even aware that ORRIE was thinking of firing him for these errors before the actual firing (462).

Although the decision characterizes the discharge as a temporary lay off, ARROYO was rehired by another supervisor, CARMINE MINICHINO, who felt sorry for ARROYO (628) and MINICHINO fired ARROYO the second time because of ARROYO'S inability to come to work every day. MINICHINO had rehired ARROYO to unpack returns from stores. On being rehired, MINICHINO told ARROYO it was important to come in every day as ARROYO would be the only one doing the job for which he was rehired (635,636).

On Tuesday, January 28, 1975, slightly more than two weeks after he had been rehired, ARROYO did not show up for work and called in at 2:00 or 2:30 in the afternoon (634) and said he was "stuck with his car on one of the parkways leading from the airport." ARROYO claims that he called at 11:00 or 11:30 (695) in the morning.

The decision characterizes MINICHINO'S testimony as "a manufactured story" *and that ARROYO was absent on Tuesday, January 21 (not Wednesday, January 29)" No party contended that ARROYO was absent on January 29. STOLL contended he was absent Tuesday, January 25, 1975.**The Administrative Judge supports this conclusion with a reference to facts that defy support in the record and contradict logic to support the incredible conclusion that ARROYO'S discharge was for union activity.

* Decision P 14, Line 36
** Decision P 14, Line 37,38

Footnote 15 -- the decision proceeds on the correct assumption that Union Agent ALEX QUIRONAS had mistakenly written down that ARROYO was discharged on January 22, 1975, which notation all parties concerned conceded was erroneous, and then continues on the assumption that ARROYO went to the airport "with office manager MINICHINO'S advance permission".

ARROYO'S testimony is clear (distinctly in conflict with the decision of the Aministrative Law Judge) saying that he was fired "Tuesday, the day before I was fired, which is the day I didn't come to work. The day before the day that I didn't find the card in the rack" (695). In the Administrative Law Judge's obvious effort to discredit MINICHINO, a supervisory employee of STOLL, who fired ARROYO for his absence on the second occasion, the decision goes into convulsive reasoning to reach the absurd conclusion (contrary to the payroll record) that the "approved" absence was on January 21 and that only after eight days did the discharge occur.

The General Counsel's witness MILTON HEERAPESAUD, who worked in the packing and shipping area, testified that he overheard ORRIE fire ARROYO. The witness explained in response to JUDGE PLAINE'S question "Tell us what happened at the discharge (in December). The witness: Well, the discharge, NORRIS ORRIE was telling EDDIE ARROYO that he made mistakes, a lot of mistakes and he can't tolerate it any more. So he fired him." (624) This same witness also testified that he had heard ORRIE warn the packers about mistakes in packing (624).

Notwithstanding 1) ARROYO'S statement that ORRIE fired him in December (562), 2) ORRIE'S statement that he fired ARROYO for mistakes in packing (560,561) which errors are fully substantiated by General Counsel's witness, NICHOLAS VARGAS (460) and MILTON HEERAPESAUD (623), the Administrative Judge determines "The alleged first firing at the end of December turned out to be a temporary lay off ... (and the firing) two weeks earlier for making mistakes is not credible ... (Decision P. 13, Lines 1, 25, 26, 34 and 36).

The evidence R4 shows beyond question that ARROYO was not working for an extended period of time. If ARROYO was not working for almost three weeks (December 25 to January 11) why then did MELANGE rehire ARROYO if, as the decision indicates, ARROYO was to be fired two weeks later in retaliation for ARROYO'S union activities. If the first firing was not credible, the decision itself is not credible. There was no testimony about union activity in the critical 17 day period.

Characterizing the rehiring after discharge as a "recall", the Administrative Judge disregards the uncontradicted testimony of MINICHINO that he rehired ARROYO because he felt sorry for ARROYO (628). If the Judge's determination that the discharge was retaliatory (o. 15 L. 19) why would MINICHINO who was the office manager for MELANGE even consider recalling or rehiring ARROYO. The obvious answer was that ARROYO was not fired or "laid off" for any union activity. He was fired for mispacking the merchandise MELANGE was sending to its customers.

Thus to buttress the untenable conclusion that firing was retaliatory, the decision states (P. 15 L. 25-30) that "without notice or warning of his shortcoming ... ARROYO was informed by his immediate supervisor, Traffic Manager ORRIE, on January 29, 1975, that he had been fired by the boss, Production Supervisor Rossi, allegedly for making a mistake in packing, without identifying the mistake." THAT STATEMENT IS INCREDIBLE. Not one part of such statement is accurate. ROSSI did not fire ARROYO; MINICHINO did. ARROYO was not fired on January 29. He was not fired the second time for mistakes in packing, but for taking the day off or coming in late.

Note, that at this point in his decision, the Administrative Law Judge ascribes both firings to ORRIE, although MINICHINO said he fired ARROYO in January - the second firing (633) and ORRIE said he was not involved in the second firing (563). MINICHINO was ORRIE'S superior.

The decision places the second discharge (on January 29, 1975) not only by ORRIE but has ORRIE identify ROSSI, the production supervisor firing ARROYO "for making a mistake in packing without identifying the mistake." (O. 15 L. 30-31).

This statement is a hopeless misconstruction of the record. The record discloses:

1. No witness attributing the second firing to ORRIE.
2. The second firing was by MINICHINO.
3. The second firing was for absence and had nothing to do with packing mistakes - the first did.
4. Orrie did not know the reason for the second firing (564)

The record does disclose that MITCHERO did not tell ORRIE why MITCHERO fired ARROYO on the second occasion (563, 586, 587, 598) and ORRIE did determine the mistake ARROYO had made before the first firing (560, 588).

ORRIE stated, without contradiction, that no one told him to fire ARROYO in December, that it was his own decision (562).

Notwithstanding all of the above, the decision disregarded facts testified to and reaches an obviously erroneous conclusion: That the firing on January 29th was retaliatory.

The confusion which has led the Administrative Law Judge to this is found in the testimony of ARROYO relating to his version of his first discharge after the mistakes in packing (284, 424).

CONCLUSION

The decision of the Administrative Law Judge is so replete with errors of fact and the substitution of speculation as not to be worthy of any credibility.

Under the approach taken by the Administrative Law Judge, no employee can be discharged for misconduct regardless of the business reasons. Such contention is quite obviously not the law.

It is respectfully submitted that the decision is totally without support in the record, disregards the events as testified to and the decision should be disregarded and the allegations of the amended complaint be dismissed.

Respectfully submitted,

LOUIS C. PULVERMACHER,
Attorney for Respondents

AFTERNOON SESSION

(The hearing convened at 2:30 p.m.)

JUDGE PLAINE: Let's go back on the record.

Mr. Blyer, why don't you call your next witness?

MR. BLYER: Okay.

JUDGE PLAINE: Will this man need an interpretor?

MR. BLYER: No, he is English speaking.

JUDGE PLAINE: Raise your righthand.

Whereupon,

SEWPERSAUD HEERAPERSAUD

was called as a witness, first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLYER:

Q State your full name for the record and also spell it?

A My name is Sewpersaud Heerapersaud, S-E-W-P-E-R-S-A-U-D , H-E-E-R-A-P-E-R-S-A-U-D .

Q Mr. Heerapersaud, who do you work for, what company?

A I work for Melange.

Q And in what department?

A The Shipping Department.

Q And what kind of work do you do?

A I do paper work like invoices.

Q Are you still working there, sir?

A Yes.

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Q And do you know Mr. Norris Oric?

A Yes.

Q Okay.

The last name is pronounced Oric?

A Oric.

Q But it is spelled O-R-I-C ?

A I guess so.

MR. PULVERMACHER: We know him as O-R-I-E , it's the same individual.

JUDGE PLAINE: O-R-I-E-C ?

MR. PULVERMACHER: Yes, that's the way we know him, sir.

MR. BLYER: O-R-I-E .

JUDGE PLAINE: Without a C on the end?

MR. PULVERMACHER: Without the C-I -- all right.

BY MR. BLYER:

Q Do you see Mr. Orie doing his job everyday?

A Yes.

Q And does he have contact with the employees in the Shipping Department?

A Sometimes.

Q And what do you hear him telling the employees in the Shipping Department?

A Well, he give them orders to do, like picking orders, everybody has their own job to do in the department, picking

ordors, packing and putting it in a stack.

Q He'll tell them what to do with regard to their jobs?

A Sometimes.

Q Sometimes?

A Yes.

Q Can you tell me how you got your job at Melange? Start from the beginning.

A Well, I know Mr. Stanley Yagoda. I work for him before and I contacted him when he was opening his new business over here and he say he will be ready in two weeks time and Norris Orie call me to work.

Q Who told you that you -- when you spoke to Mr. Yagoda --

A Yes.

Q -- did he tell you that you had a job when he opened up his plant?

A He said -- when I asked, I say I like to go and work for him, right, he say okay, when the business -- when he ready, I can call him.

Q Did you ever speak to Mr. Rossi before you were hired?

A No.

Q And eventually you went to work for Melange?

A Melange.

Q And that was Mr. Orie who called you up and said come in?

A Right.

Q Now, do you recall sometime in approximately December 1974, perhaps around Christmas time, having a conversation with Mr. Orie about Local 318?

A Yes.

Q Okay.

Will you tell us what he said to you and what you said to him?

A Well, he bring me a card to sign for Local 318, and I signed the card and give it back to him.

Q Was there any conversation between you?

Was there any conversation between you and him?

A So I ask him where is the contract?

He say you get it in a few weeks time.

Q Was that about it?

A That's about it.

Q What did you do with the card after you signed it?

A Signed the card and give it back to him.

MR. BLYER: Thank you very much.

I have nothing further.

JUDGE PLAINE: You may cross-examine, Mr. Pulvermacher.

CROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Mr. Orie, do you know this gentleman on the right?

MR. BLYER: This is not Mr. Orie.

MR. PULVERMACHER: I'm sorry, excuse me.

Q Mr. Heerapersaud --

A Call me Milton.

Q Milton, that's better.

JUDGE PLAINE: Is that your nickname?

THE WITNESS: That is my nickname.

MR. PULVERMACHER: I think the court and I would do better with that nickname.

Q You know the two gentlemen on the side?

A Yes.

Q You say Mr. Yagoda in the factory?

A Yes.

Q Do you see him frequently?

A Frequently.

MR. PULVERMACHER: No further questions.

JUDGE PLAINE: Who was the second gentleman he identified?

MR. PULVERMACHER: I was referring to Mr. Rossi and to --and Mr. Rossi worked for Melange as far as I know?

THE WITNESS: Right.

JUDGE PLAINE: Anybody else have any questions?

MR. FOGELMAN: No.

JUDGE PLAINE: Any redirect?

MR. BLYER: No, Your Honor.

JUDGE PLAINE: Thank you.

You are excused.

Thank you.

THE WITNESS: Thank you.

(Witness excused.)

MR. BLYER: Mr. Arroyo.

I think we need the Spanish interpretor. Mr. Boyne here?

THE INTERPRETOR: Yes.

JUDGE PLAINE: Raise your righthand.

Whereupon,

EDWARD NELSON ARROYO

was called as a witness, first being duly sworn, was examined and testified as follows:

(Witness sworn by the Judge through the Interpretor.)

DIRECT EXAMINATION

BY MR. BLYER:

Q Mr. Arroyo, did you work for Melange at one time?

THE INTERPRETOR: Do you want name?

Q He didn't give the name, I'm sorry.

JUDGE PLAINE: Get it for the record.

MR. BLYER: I apologize.

Q Please state your name for the record.

A Eddie Nelson Arroyo, A-R-R-O-Y-O .

Q Mr. Arroyo, did you work at one time for Melange?

A Yes.

Q Do you recall when you began?

A The end of September or the beginning of October.

Q And what did you do for them?

A Shipping and packing.

Q And you are not still working there; isn't that correct?

A No.

Q Now, At the time you stopped working for the company, how much were you earning an hour?

A When I stopped working?

Q Yes, sir.

A Three dollars.

Q And when you started working for the company how much were you earning?

A Two sixty.

Q When didyou receive — when did you start receiving three dollars an hour?

A Two weeks before I was fired.

Q All right.

If you know, how did you get the raise?

A I asked Carmine.

Q Carmine?

A Carmine.

Q I'm sorry, that's Carmine, isn't it? Carmine?

THE WITNESS: (In English) Carmine.

THE INTERPRETOR: It sounds to me like Carmine.

MR. BLYER: Are we in agreement that he is saying Carmine -- he is referring to Carmine Minichino.

MR. PULVERMACHER: Yes.

MR. BLYER: Do we have the spelling on that last name -- excuse me, can we go off the record a second.

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

Let the record reflect that the Carmine Minichino is the same as Carmine Minichino shown in paragraph 9-B of the complaint.

MR. BLYER: There was some reference to him earlier in the case.

JUDGE PLAINE: And the references to the same person earlier in the case will be this individual who has been identified as M-I-N-I-C-H-I-N-O .

BY MR. BLYER:

Q Do you recall in late December 1974, meeting Mr. Lewis --

JUDGE PLAINE: Hold on counselor.

I thought you have a pending question as to what he asked Mr. Minichino or did he ask Minichino for something, did he answer the question?

THE WITNESS: The raise.

JUDGE PLAINE: All right.

Is that reflected in the record?

I didn't get the answer.

MR. BLYER: I am not sure it was.

JUDGE PLAINE: With the Minichino, about the spelling I get mixed up.

MR. BLYER: Shall we restate it?

JUDGE PLAINE: Why don't you.

MR. BLYER: Okay.

BY MR. BLYER:

Q I ask you Mr. Arroyo, how was it that you received this raise?

A I went to Carmine and I ask him for the raise.

Q Now, in late December 1974, do you recall meeting Mr. Lewis at the plant?

A Yes.

Q Will you tell us what happened?

A They came upstairs to the big door, they didn't come in, and they asked me if there was a good union there, I told them there was no union. And then they told me that if I wanted a good union or we wanted a good union we should talk to them.

So at the moment I was free I could come down with the box -- with the box I have to take downstairs and I spoke to them about the union, and the benefits of the union. And they had already talked with Romanita about it before, so they gave me about 25 or 30 cards and I went upstairs and

distributed them.

Q Now, when you say they, who are you referring to?

A Norman Lewis and Alex Quinones, Q-U-I-N-O-N-E-S .

Q Mr. Arroyo, did you sign a card for 155?

A Yes.

Q And when was that in relation to the time you met Mr. Lewis?

A About two, three days after I distributed the cards.

Q Now, a week or so after meeting Mr. Lewis, did you have a conversation with Morris Orie about 318?

THE INTERPRETOR: You mean about the week after meeting Lewis?

MR. BLYER: Yes.

THE INTERPRETOR: Did you have a conversation with --

MR. BLYER: Mr. Norris Orie about 318?

A Yes, after I signed the card, yes.

Q And where did this conversation take place?

A At the Shipping Department.

Q And was anybody else there?

A Varguez and Lewis, Martinez.

Q Did they both work for Melange?

A Yes.

Q In the Packing Department like you?

A Yes.

Q Now, what did Mr. Orie say to you?

A He came with some cards for union 318, and told us to sign them. We refused to sign the cards and he --

JUDGE PLAINE: Did you say we or he?

THE INTERPRETOR: We.

JUDGE PLAINE: We.

THE INTERPRETOR: He said we.

A He insisted we should sign the cards. We said we didn't want to sign.

We continued with our work. We were in the back, in the rear in the backside, Varguez and I were there, and Norris was there also checking some work and then Pete came, and he asked Norris who were the men who didn't want to sign and Norris pointed out tome and to Varguez.

Peno told us to accompany him to the office --

JUDGE PLAINE: Who?

THE INTERPRETOR: He said Peno.

THE WITNESS: (In English) Pete Rossi.

THE INTERPRETOR: Pete Rossi.

Is it Pete or Peno?

MR. BLYER: Peter.

THE INTERPRETOR: All right.

BY MR. BLYER:

Q Go on, Mr. Arroyo.

A We walked into the office and he asked us why didn't we want to sign. We said we didn't want a union. He said

we had to sign otherwise we have to go to look for other work. So at that moment Stanley said that the union was good, he was going to pay $100 for the book, that the union had good benefits and that we had nothing to pay.

So since Pete said that if we didn't sign we would have to leave the job, so we signed.

Q And --

MR. PULVERMACHER: Would the reporter read back the answer, I've lost it.

JUDGE PLAINE: Yes, I think it is useful if you do, if you can get to it.

(Whereupon, the reporter read back the last answer.)

BY MR. BLYER:

Q Now, approximately one week later, do you recall someone from Local 318 coming to the shop?

A Yes.

Q Okay.

And do you recall a meeting that the Local 318 official held?

A Yes.

Q And do you recall who was present at that meeting?

A What do you mean by who was present?

Q Well, who was there?

A All the employees.

Q All right.

And will you tell us what the 318 official said?

A He identified himself as an agent of Local 318. He told us the benefits of that union and that that was the union already there and that what union 155 was doing was illegal because 318 was already there.

Q Now, did you say anything?

A I asked him if it was illegal that an employer should take an employee and put him into the office and force him to sign a card otherwise he had to leave. He didn't answer him because everybody was talking there and he didn't give me any answer, so I left.

Q Was the man -- the man who you -- who was talking to you on this day, is he here today?

A (In English) Yes.

THE INTERPRETOR: The witness answered yes without me giving the question, so you take it the way it is.

JUDGE PLAINE: Yes.

Mr. Arroyo, please continue to answer in Spanish so we can get the Interpretor --

THE INTERPRETOR: Not only that, wait until you hear the question before you answer.

THE WITNESS: (In English) Okay.

BY MR. BLYER:

Q Can you point to that man?

A Witness indicates. (The man with the green jacket.)

MR. BLYER: Can the record reflect, Your Honor, he pointed to Mr. Oliveri, who is a representative of Local 318.

JUDGE PLAINE: Yes.

Can you spell that for me again, if I haven't got it before.

MR. BLYER: It is --

MR. OLIVERI: O-L-I-V-E-R-I .

JUDGE PLAINE: O-S-I ?

MR. OLIVERI: O-L-I-V-E-R-I .

MR. BLYER: Thank you, Mr. Oliveri.

MR. OLIVERI: Right.

BY MR. BLYER:

Q Now, what was the last day you worked for the company?

A I believe it was a month.

Q And the last -- and the day you were fired was when, what day?

A Wednesday.

Q Okay.

On the Monday before the day you were fired -- before the -- excuse me, on the Monday before the Wednesday that you were fired, did you have a conversation with Mr. Quinones from Local 155?

A Yes.

Q Okay.

Now, where did this conversation take place?

A Downstairs in front of the factory.

Q And what time of day?

A In the morning.

Q And during the course -- during the course of the conversation with Mr. Quinones, did Mr. Rossi come by?

A Yes.

He parked the car there to get into the factory.

Q All right.

Well, did he talk with you -- excuse me. Withdrawn, please.

What happened?

A He looked at us and went up his way.

Q Now, the following day did you go to work?

A No.

Q On the Wednesday, your last day of work -- your last day of employment with Melange, will you tell us what happened when you came to work?

A When I arrived in the morning for work I didn't find my card on the rack.

Q What happened?

A So I went into -- inside the factory and I asked Norris, NArris told me that Pete had said I was fired, so I waited there for one or two hours and neither Pete or Carmine came to talk to them.

Q And then what did you do?

A So I left.

Q Did you have any conversation on this day with Mr. Orie about why you were fired?

A Yes, I wanted to explain to him. He told me I was already fired and that he could do nothing.

Q Did he tell you, Mr. Orie, why you were fired?

A He said one order came out bad.

THE WITNESS: (In English) Wrong.

THE INTERPRETOR: Wrong.

JUDGE PLAINE: I didn't hear the answer.

THE INTERPRETOR: He said that one order had come out wrong. Wrong.

I translated bad. Hecorrected me to wrong.

JUDGE PLAINE: Can you read that back to me.

(Whereupon, the reporter read back the last answer.)

BY MR. BLYER:

Q At that point what did you say?

A I explained to him what had possibly happened -- what possibly happened.

Q What did you say?

A I said that the order had come wrong from the order pickers, those who pick the orders because Varguez and I were working together in order to go ahead, Varguez would put the blouses into the boxes and I would close the boxes and put my name on the bill and also his name sometimes, so -- but

according to them the orders were wrong and therefore they fired me.

Q Well, what did Mr. Orie say after you gave him your explanation?

A That he could do nothing.

Q To your knowledge did he try to find out if your explanation was correct?

A No.

He simply showed me the paper which showed my name.

mr. pulvermacher; Would you repeat that last answer.

THE INTERPRETOR: He simply showed me the paper where my name was there on the paper.

BY MR. BLYER:

Q Your job so we understand is to do what -- your job was to do what?

A Packing.

Q Did you have --

JUDGE PLAINE: Packing did you say?

THE INTERPRETOR: Packing.

Q Did you have anything to do with what went into the box?

A No, because they put the blouses on the table and I have to put the blouses in the boxes.

Q Okay.

What day of the week, Mr. Arroyo, did you receive your

paycheck?

A On Fridays.

MR. BLYER: May we go off the record, Your Honor?

JUDGE PLAINE: Yes.

Off the record.

(Discussion off the record.)

JUDGE PLAINE: Let's go back on the record.

MR. BLYER: I propose the following stipulation, that at the time that -- on the date that Mr. Arroyo was discharged from Melange, that the payroll period for Melange ended on Saturdays.

JUDGE PLAINE: Any objection to that stipulation?

Is it consented to?

MR. PULVERMACHER: Consented to by Respondents.

JUDGE PLAINE: Thank you very much.

By the way, Mr. General Counsel, did you identify the date when Mr. Arroyo was fired?

We haven't got the day of the week. Have you identified the date he was fired?

MR. BLYER: Well, it may be in the papers but I think we can also stipulate the day he was terminated was January 22nd, a Wednesday; isn't that correct?

MR. PULVERMACHER: No.

I think we might go off the record without cluttering it up for a moment.

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: I propose the stipulation that Mr. Arroyo was terminated by Melange on Wednesday, January 22, 197 -- January 29, 1975.

MR. PULVERMACHER: I have no objection.

MR. FOGELMAN: Just a minute.

The witness is shaking his head no.

Does the witness have a problem with that?.

MR. BLYER: I guess he does.

THE INTERPRETOR: Ask him.

JUDGE PLAINE: Let's go back on the record and not try to arrive at our stipulation yet.

BY MR. BLYER:

Q Mr. AMroyo, do you know what day you were fired?

A The 22nd.

Q Wednesday the 22nd?

A Yes.

Q You don't believe it was a week later on the 29th?

A No.

THE INTERPRETOR: He asked why you people talking about vacations that he took?

MR. BLYER: Don't be concerned with that.

May I have the time cards?

MR. PULVERMACHER: YEs.

MR. BLYER: Can I have this marked?

JUDGE PLAINE: Yes, of course.

MR. BLYER: General Counsel's Exhibit Number 2.

(The above referred document was marked General Counsel's Exhibit No. 2 for identification, as of this date.)

JUDGE PLAINE: What weekend is this for G.C. 2?

MR. BLYER: G.C. 2 is for the weekending 2/1.

With your permission I would like to have marked as G.C.3 Mr. Arroyo's time card for the weekending 1/25/75.

MR. FOGELMAN: May I see those cards after you've marked them?

MR. BLYER: Yes.

(The above referred document was marked General Counsel's Exhibit No. 3 for identification, as of this date.)

BY MR. BLYER:

Q Mr. Arroyo, I show what has been marked for identification as General Counsel's Exhibits Numbers 2 and 3.

First let me show General Counsel's Exhibit Number 3.

That's your signature at the top; is that correct?

A No, this is not my signature.

Q Do you normally put in your signature on your time card?

A No.

Q The company does; is that correct, sir?

A Yes.

Q Someone from the company?

A The company puts the name there.

Q All right.

You can look at that time card and let me also show you what's been marked for identification as General Counsel's Exhibit Number 2.

Now, they show that you stopped working on what appears to be on Tuesday, the 28th of January?

A Where does it say it's the 28th?

Q This card says that it's for the weekending February 1st, '75, and if you see the card is stamped Monday and Tuesday would be the 28th and of course we had the 29th is black showing you didn't work and all the days after that show that you didn't work.

So is there any reason why now you think that the -- that the last -- you were fired on the 22nd still?

A Yes.

Q You still believe you were fired on the 22nd?

A Yes.

Q Well, can you explain how the cards are punched for days after that?

A I don't know about that but Tuesday I didn't come to work. Tuesday in the evening Varguez told me that there were some orders which were wrong, so when I came to work Wednesday

morning the card was not on the rack.

Q And you believe that is Wednesday, January 22nd?

A Yes.

Q Okay. Thank you.

Now, two days after you were told you were no longer working for the company?

A Wednesday morning.

Q No, two days after the Wednesday?

A No response.

Q Two days after the Wednesday did you go to the factory?

A Yes, I went there to pick up my check.

Q Okay.

What happened when you went there to pick up your check?

MR. FOGELMAN: Your Honor, I am a little confused about dates, the waythe witness has testified.

There apparently is some confusion as to the date when he claims he was discharged and the dates that the payroll records so indicate.

JUDGE PLAINE: Yes.

MR. FOGELMAN: Now, the General Counsel is now proceeding on -- referring to days after he was discharged.

I would like to understand what days he is referring to.

JUDGE PLAINE: Let me explain it to you.

The witness claims he was fired on January 22, 1975.

The pending question is or the pending proposed to be answered to the question is two days after January 22nd he went to get his paycheck, that's what seems to be the situation.

MR. FOGELMAN: I see.

So we're talking about --

JUDGE PLAINE: Two days after January 22nd.

MR. FOGELMAN: So that would be January 24th.

MR. BLYER: Okay.

BY MR. BLYER:

Q What happened when you went to get your check?

A I went to the office to get Carmine to give me my check. Carmine gave me the check and say -- Stanley asked me if I was one of the men who wanted to bring in Local 155, I told him yes, and he said you know that here is only the union 318, and no other union will get in here, so I walked out and left.

JUDGE PLAINE: My understanding -- was this something that Stanley said directly to the witness?

THE WITNESS: Yes.

JUDGE PLAINE: This is not Carmine telling him?

THE WITNESS: No.

JUDGE PLAINE: All right.

MR. BLYER: Just one minute, Your Honor, please.

JUDGE PLAINE: Yes. Of course.

BY MR. BLYER:

Q Mr. Arroyo, ever there been a time that you were told by anyone at Melange or Stoll that you had made a bad order?

A Yes, once.

Q And who told you that?

MR. PULVERMACHER: Who?

MR. BLYER: He didn't answer yet.

Q Who told you had made a bad order?

A Norris.

Q And on this occasion -- when was this as best as you can recall?

A I don't recall exactly. I think it was about three weeks after what happened.

Q About three weeks after?

THE INTERPRETOR: After what happened.

Q What do you mean three weeks after what happened?

A Before I was fired.

Q All right. Okay.

MR. PULVERMACHER: After or before?

THE INTERPRETOR: He said before.

JUDGE PLAINE: About three weeks before he was fired; is that right?

THE WITNESS: Three weeks before I was fired, I think.

BY MR. BLYER:

Q And can you tell us just what happened on this occasion?

A It was also an occasion where the orders they filled into the boxes was wrong, NOrris told it to me, and then Carmine got all the Shipping Department and he told everybody that he who makes a wrong order will be discharged.

Q To your knowledge, Mr. Arroyo, were you ever fired before for any reason?

A No.

Q Did there come a time that you were out of work for a while?

A About two, three days.

Q Was it ever any period of time longer than two or three days as best as you can recall?

A No, I don't believe so.

Q And when you were home these two or three days, what was the explanation for that?

A I would call them and they would tell me that the work was slow, I should call the following day. So I would call the following day and they will keep saying that the work was slow and so on until theytold me — and Carmine told me to come back thathe had a special job for me.

Q Who would you speak to each time?

A Carmine.

Q Now, do you see Carmine -- didyou see Carmine at work?

A Everyday in the office.

Q Did he only work in the office?

A He works in the office and I believe he also is -- gives orders to the Shipping Department.

Q Well, did he ever give orders to you or to anybody else?

A To everybody.

Q What kind of orders?

A Things we have to do.

Q Okay.

How about Mr. Orie, what did he do at work?

A He would also give us orders.

Q Can you give us an example of what kind of orders they would give you, Carmine or Norris?

A For instance, when I came back to work he told me he had a special job for me and there was a month no packages they had over there, they had beenreturned, and I had to pull out the merchandise from the packages and place them back to theplaces where they use to be before.

JUDGE PLAINE: Who was this, was this Orie or Carmine?

THE WITNESS: Carmine.

JUDGE PLAINE: Did you ask for an example of what Orie --

MR. BLYER: Well, either one or both and he gave me Carmine.

JUDGE PLAINE: All right.

BY MR. BLYER:

Q How about Mr. Orie, do you know any specific instances relating to what he would tell you to do?

A He would tell us to work, he would tell us to work, he would tell us to rush. He would tell us to sweep the floor.

Q Did Carmine ever tell you those things too?

A Carmine set out a law there, that we had to sweep the floor everyday before we leave because they had only one floorman there and that he couldn't take care of the whole thing, the whole place.

MR. BLYER: Thank you very much.

I have no further questions.

Your Honor, may I request a 15 minute recess so I can take care of trying to process these papers that we have --

JUDGE PLAINE: All right.

Well, that will give counsel time to organize his thoughts on cross-examination.

I have ten minutes after the hour.

Let's resume at twnety-five after three.

(REcess taken at 3;10 p.m.)

(The hearing reconvened at 3:50 p.m.)

JUDGE PLAINE: Let's go back on the record.

Cross-Examination of the witness.

MR. PULVERMACHER: I believe Mr. Blyer wants to make a statement before I proceed.

JUDGE PLAINE: All right.

MR. BLYER: I think at this time, Your Honor, it would be -- I would like to note that the parties have reached agreement on an election and a petition has been filed for an election and the parties have entered into an consent agreement which isnow in the process of being considered by the Regional Director to see whether or not he will approve it and as I understand it, he is prepared to approve the agreement if it would be stated on the record here that the employers Stoll and Melange and Local -- will hold and withdrew recognition from Local 318.

MR. PULVERMACHER: On behalf of respondents SToll, Melange individually and collectively I wish to confirm that they will withhold recognition of 318 pending the election and will act -- which will however act in accordance with the contract with respect to terms and conditions of employment which I believe was also part of the understanding.

MR. BLYER: Well, nothing -- as I understand it nothing reuires you to vary your terms and conditions of employment.

On the other hand, by your agreement to withdraw and withhold recognition you certainly are agreeing not -- and

to set aside the contract, you certainly aren't -- you are obliging yourself not to enforce the union security clause and other --

MR. PULVERMACHER: And grievance procedures, yes.

MR. FOGELMAN: Excuse me, before we go any further, is this something that is -- that the Regional Director insited on the record?

MR. BLYER: Absolutely.

MR. FOGELMAN: Did you advise us before this hearing that this is what was going to be discussed before the Hearing Judge?

MR. BLYER: Absolutely.

MR. FOGELMAN: No, you didn't, sir.

MR. BLYER: Is this news to everybody else?

MR. ROSENBERG: No.

MR. FOGELMAN: Just a moment.

What I am suggesting is that we discussed that whatever we settled and whatever the terms were were not to be brought out at this hearing.

MR. BLYER: Well, we didn't say that because --

MR. FOGELMAN: That was my understanding.

MR. BLYER: Well, you knew all along that we had to do something and there was an agreement to do something with regard to the recognition and the contract, and it wasn't enough to agree defacto that you weren't going to recognize

the union.

We told you very clearly that it had to be done on the record or altenatively --

MR. FOGELMAN: No, sir.

MR. BLYER: -- by statement.

MR. FOGELMAN: No, sir.

MR. BLYER: All right. So what now?

May we go off the record, Your Honor?

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record, please.

MR. BLYER: Your Honor, I propose the following stipulation, that the Respondents, respondent Stoll and respondent Melange, hereby agree to withdraw and withhold recognition with regard to Local 318, concerning the employees employed by respondent Melange and respondent Stoll, that Local 318 agrees to refrain from accepting recognition and that both parties, Local 318 -- I should say all three parties, Local 318 and the two respondents agree to the setting aside of the contract. The two contracts, contract between respondent Stoll and Local 318, and respondent Melange and Local 318.

I further state that if that stipulation is agreed to, that the General Counsel is prepared -- which will approve the consent agreement that had been entered into among the parties, and that the General Counsel which will request that the

allegations included in paragraphs 10 through 13 of the complaint be withdrawn, and of course where those paragrapsh are referred to in the conclusionary paragraphs of the complaint, that this too be eliminated from the complaint.

JUDGE PLAINE: What paragrapsh were they again?

MR. BLYER: That would be -- I think it's 21 through 23, Your Honor.

JUDGE PLAINE: The first paragraphs were 10 through 13 in your proposal to withdraw I think you said.

MR. BLYER: Right. And --

JUDGE PLAINE: And the related conclusionary portions of the conclusions paragraphs?

MR. BLYER: Wherever they are referred to in paragraphs 22, 23 and I see on 24, and where else, if they are anywhere else.

JUDGE PLAINE: Well, spell it out by simply calling it the related portions of the conclusionary paragraphs.

MR. BLYER: And of course this withdrawal and withholding of recognition is unless and until the time Local 318 is certified as the collective bargaining representative of any or all of those employees.

JUDGE PLAINE: I didn't follow that?

MR. BLYER: The withdrawal and withholding of recognition will be until the time, if such time ever occurs, that Local 318 is certified as the collective bargaining representative.

That's my proposal, Your Honor.

JUDGE PLAINE: Do the parties agree?

MR. PULVERMACHER: Yes, Your Honor.

MR. FOGELMAN: Your Honor, may I go off the record for a moment?

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: Let's go back on the record, please.

Mr. General Counsel, have you stated in general what your report is now?

MR. BLYER: Yes, and I've proposed a stipulation, Your Honor, which I think had been agreed to already by Mr. Pulvermacher.

MR. PULVERMACHER: I thought I had. If I hadn't, I will, since I put it in the future, I do.

JUDGE PLAINE: All right.

Mr. Pulvermacher agrees for the Respondents.

For the -- for Local 318.

MR. FOGELMAN: Mr. Fogelman consents.

JUDGE PLAINE: Mr. Fogelman consents.

For Local 155.

MR. ROSENBERG: Local 155 consents.

JUDGE PLAINE: In that event I will approve the agreement and I will also approve the -- the motion to withdraw paragraphs 10 through 13 of the complaint, and those portions

of the conclusionary paragraphs of the complaint that are directly related to paragraphs 10 through 13.

Is there any further action needed on this matter, Mr. General Counsel?

MR. BLYER: Not that I know of.

MR. ROSENBERG: One thing, sir, that this whole matter is subject to the Regional Director approving the consent election agreement.

MR. BLYER: Which he has done.

MR. ROSENBERG: He has done that?

MR. BLYER: It was conditioned on these other factors. It was conditioned on the withdrawal --

JUDGE PLAINE: Yes.

MR. PULVERMACHER: May I as, is there anybody elses' consent who is required to be obtained at this point with respect to the stipulation?

JUDGE PLAINE: So far as I know I am in charge of it.

MR. PULVERMACHER: All right.

MR. BLYER: Okay.

JUDGE PLAINE: So the parties have consented, I have consented and the Regional Director has done all that he can do -- by the way just as a matter of information, did you get your early election date --

MR. BLYER: Yes.

JUDGE PLAINE: -- agreed on?

MR. BLYER: Yes.

JUDGE PLAINE: All right. Very good.

Now, can we continue with the balance of the case?

MR. PULVERMACHER: Let the record reflect that during the adjournment and during the discussions I had requested a copy of Mr. Arroyo's statement which the General Counsel's office has furnished me and is presently in front of me.

JUDGE PLAINE: Thank you.

CROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Mr. Arroyo, wheredid you work before you came to work for Melange?

A I was in Porto Rico.

Q Then this was your first job in an American plant -- American Continental plant?

A No.

Q What was your first job in an American plant based in New York -- Continental America?

A Night Slipper.

Q Where was the plant located?

A 36th Street and Third Avenue.

Q In Manhattan or Bronx -- Manhattan or Brooklyn?

A In Brooklyn.

Q Were you packaging in that plant?

A I was in charge of the Shipping Department.

Q How many people were you in charge of?

A Two.

Q You and one other?

A Myself and two more.

Q Now, I believe you testified that you started working with Melange the end of September or thebeginning of October?

A Yes, more or less.

Q Do you remember how many days you worked the first week?

A I believe five or six.

Q Five or six?

A Yes.

Q Was your work week a six day week?

A Five days.

Q That was the regular work week?

A That almost always they would bother you you should work overtime.

Q What were the hours, the regular hours that you worked?

A From 8:00 a.m to 4:00 p.m., I believe.

Q Would you care to give me a statement of how many times you came in after 8 o'clock?

A I am not sure. Maybe two, three times. Maybe always -- many of the times I came late because they themselves told me to come late, I have another witness who was subject to the same thing. There was sometime when they would tell an

employee to come 10 o'clock or 11 o'clock.

MR. PULVERMACHER: May I ask the reporter to read the questionand the answer back so I may have it consecutively.

JUDGE PLAINE: Yes, sir.

(Whereupon, the reporter read back the last question and answer.)

Q Did you mean to indicate that you were only late two or three times during the period from the beginning of your employment to the end of your employment?

A Yes.

Q And about on how many times were you told to come in at 10 o'clock or some period later?

A About -- for about the period of a week and a half or two.

Q Can you tell us when that period was?

A I don't recall.

Q The month?

A Neither do I remember.

Q Now, when you -- the first couple of months that you were working for Melange how many employees were in the Packing and Shipping Department?

A How many people were packing?

Q In the Packing and Shipping Department?

A Four people, five.

Q And would you help me identify these people by giving

the names?

A Milton, Varguez, Milton's sister.

Q Excuse me.

A Milton's sisters.

MR. PULVERMACHER: Bentons?

THE INTERPRETOR: Milton's sister.

MR. FOGELMAN: Milton.

MR. PULVERMACHER: Oh, Milton's sister.

A Norris.

Q And himself?

A Yes.

Q All right.

How large an area is the Packing and Shipping Room?

A I never measured it.

Q Is it as big as this room?

A More or less.

Q All right.

And who would be the first person to handle any of the goods of these four or five that you have mentioned?

A I don't understand.

Q Let me start another way.

You would put things into boxes, I am talking in the early period.

A Yes.

Q And what you were putting into the boxes was finished

sweaters or tops for women's wear?

A Yes.

Q Who was the one who got the instructions as to how many pieces of what type went into the box?

A Narvaez.

JUDGE PLAINE: Are we talking about Norris or Narvaez?

THE INTERPRETOR: He pronounces Narvaez. I assume that's the name you people know.

JUDGE PLAINE: Norris? We thought this was a new name.

A The Indian foreman.

Q MILTON?

A No.

THE INTERPRETOR: There is another foreman?

MR. BLYER: That's Mr. Orie.

JUDGE PLAINE: Orie. Norris Orie, is that the man?

THE WITNESS: (In English) Yes.

JUDGE PLAINE: It's established this is Norris Orie.

MR. PULVERMACHER: Norris Orie?

JUDGE PLAINE: Yes.

MR. PULVERMACHER: The employer didn't understand the reference to the term Indian foreman.

BY MR. PULVERMACHER:

Q What would he do with the slip of paper?

THE INTERPRETOR: With the slip of paper?

MR. PULVERMACHER: Yes, which told him what to put into

the box?

A Who?

Q Norris?

A You better ask him, I don't know what he did with it.

Q Well, did these five people stand against the table?

A Yes.

Q Who was the first one on the righthand side?

A The right side, nobody was there on the right side. In the back was Norris sitting on the table -- at the desk with the papers.

Q Norris was sitting with the papers?

A Yes.

Q Did the paper always sit -- stay in front of Norris?

THE INTERPRETOR: The paper or papers?

MR. PULVERMACHER: Either way.

A What paper are you talking about?

Q Let's say Norris is over there by where that post is. (Indicating)

Where did you stand in relation to Norris?

A Over here. (Indicating)

Q Over there. Was there anybody between you and Norris?

A Those who came with the blouses and put them on the table.

Q Which two?

A Those who came with the blouses and put them on the

table.

Q I ask you again, that's Norris (Indicating) you are where you are, was there anybody between you or that side of the table?

A Those who came with the merchandise and left it on the table and left and then went away.

Q Were the people who put it on the table among the four or five people you mentioned?

A No, that was Milton's sister.

Q You mentioned Milton's sister. Wasn't she among the five that you mentioned before?

A Of course I said it and this is what you asked me. You asked me how many people worked in the department.

Q Right.

Would you tell him that I am asking the witness what the people were doing in the department?

A Milton is in charge of putting information on the boxes. Sometimes we do it too.

If somebody in charge of picking up the boxes comes he has to give him the invoices, corressponding invoices and to fill in the invoices.

Milton's sister comes -- goes and pickes up the orders. I do the packing -- I did the packing.

Norris was making the invoices. Norris would make the invoices and he would give it to Milton's sister and Milton

sister would go and pick — would go and pick up the blouses and will bring them to the table.

Q Now, you were putting the blouses, the sweaters into the box?

A Yes.

Q And we're talking now in the period before Christmas?

A Now, if we are talking about the period previously, before Christmas, at that time there was working more people.

Q Well, I was talking in the early part of his work.

A You talked —first you said at the first — at the beginning of my employment.

Q Let's limit it to the first part.

Now, you physically took the sweaters or — what was the term you said?

JUDGE PLAINE: Blouses.

Q — blouses into the box?

A We were talking now about the work done recently?

Q No, I am talking about the same early period.

A At the beginning when I started?

Q Yes.

A Oh, no, — it's exactly what I said. You can ask me the question now, if it's about that there.

Q Fine.

You picked the blouses up which Milton's sister put on the table and put it in the box?

A Yes.

Q Did you see the invoice that was to accompany the box?

A Of course.

Q Now, these blouses were of different colors?

A Almost always, yes.

Q And were there different sizes of these blouses?

A Yes.

Q And were there different styles of the same?

A Yes.

Q So that the variations were the color, size, style?

A Yes.

Q And you had to see that the right size, the right color and the right style got in the box?

A Yes.

Q As well as seeing that the right number of units got in the box?

A Exactly.

Q When you were finished you used to initial the invoice?

A Yes.

Q And that meant that the box was packed with the irght color, the right style and the right style and number within the box?

THE INTREPRETOR: I asked him already. He said yes.

MR. PULVERMACHER: Thank you.

BY MR. PULVERMACHER:

Q Did there come a time when someone criticized you for putting in or not checking out the boxes properly?

A Yes, once, once somebody reproached me for something that was wrong.

Q Who reproached you for it?

A Norris told it to me and then Carmine talked to me -- to me and everybody about it.

Q And I believe you've said that either Norris or Carmine in December threatened to fire anybody who didn't pack properly?

A This is for the time I am talking about.

Q Yes?

A This is about the time we were talking.

Q Yes.

And did anybody get fired for that?

A No.

Q Now, let's go back to the promptness or tardiness of your reporting for work.

I show you a card and ask you if that's a time card similar to the ones you used when you were working for Melange?

(Handing document to witness.)

A Yes.

Q And is that the first time card you had working for Melange?

A I don't remember whether this is or not, there all the same.

MR. PULVERMACHER: I offer it -- I am going to offer it for evidence so let me pass it around.

MR. BLYER: Do you want to get it marked?

JUDGE PLAINE: Get it identified. That will be 4.

It's one card or more?

MR. PULVERMACHER: I will do it individually.

Can we go off the record?

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

BY MR. PULVERMACHER:

Q When you came in in the morning you had a time card near the elevator?

A Yes, in the rack.

Q What did you do with that card in the morning?

A I punched it and sometimes won't puch it because the machine wasn't working, and then somebody -- they said that later maybe Carmine will write down on the card whatever was necessary.

Q Well, I am referring to thecard that has the yellow imprinted portions.

Did you do that by putting it under a time clock?

A What are you talking about?

THE INTERPRETOR: He wants to see it.

A There is nothing yellow here about the card.

Q I didn't say yellow, blue.

THE INTERPRETOR: You said yellow.

MR. PULVERMACHER: I stand corrected.

A This comes out from the time clock. This will be done by the time clock.

Are you talking about this? (Indicating)

Q Yes. You put it under the time clock?

A Yes.

Q You never put anybody elses card under the time clock?

A You put only your card.

Q And nobody ever put your card under the time clock?

A No.

Q. Now, there is handwriting that appears on this card.

You didn't put that on, did you?

A No.

Q All right.

So that these are your -- this batche of cards which I will show which bear the time punches --

A Yes.

Q -- with your time cards reflecting the times you came and went while you were in the employ of Melange?

A Yes.

MR. PULVERMACHER: All right.

paragraphs 10 through 13 of the complaint, and those portions

Now, may we go off the record?

JUDGE PLAINE: Yes. Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

We are going to mark as R-4 for identification 17 time cards of the witness Arroyo which will be in chronological order.

(The above referred document were marked Respondent's Exhibit R-4 for identification, as of this date.)

MR. PULVERMACHER: They will be referred to for references purposes by the notation appearing in the upper right-hand corner which is W.E. and a month and a day of the month which stands for weekending whatever.

JUDGE PLAINE: Yes.

Do these purport to be the time cards for the whole period of his employment that he was with Melange?

MR. PULVERMACHER: Yes, Your Honor. I'm so advised.

JUDGE PLAINE: All right. Thank you.

MR. BLYER: Can we go off the record a second?

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record, please.

MR. PULVERMACHER: Your Honor, may I make a motion to substitute copies for documents which have been marked R-3,

MR. BLYER: Yes.

JUDGE PLAINE: -- agreed on?

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R-2 and I don't know what happened to R-1.

JUDGE PLAINE: R-1 was the employment record of Mrs. Diaz.

MR. PULVERMACHER: I don't know where it is. I don't see it in the pile.

JUDGE PLAINE: R-2 is in the rejected file.

MR. PULVERMACHER: They are all filed together.

JUDGE PLAINE: R-3 was five paychecks and R-4 is 17 time cards.

Do I hear anything from the parties with respect to the motion to substitute copies?

MR. BLYER: No problem.

My only request is that as Mr. Pulvermacher talks about each card that we have a copy of the card.

JUDGE PLAINE: Of your own copies?

MR. BLYER: Yes.

JUDGE PLAINE: Obviously he doesn't have them here and the question is whether he can produce a set overnight.

Counsel for the General Counsel has asked that you provide him, if you can, as quickly as possible with duplicate sets so he can folow you on your questioning.

MR. PULVERMACHER: I will be happy to but I wouldhave to make a request we start a little later so I can make my office first in the morning. That's the problem.

JUDGE PLAINE: I think on that basis I am going to have

to require counsel to lean over your shoulder or something to get this done.

I don't want to take more time on these side things.

MR. PULVERMACHER: Why don't you make copies?

MR. BLYER: If you ask, I will make them.

MR. PULVERMACHER: I've asked.

MR. BLYER: Do you want to stop things now?

JUDGE PLAINE: No, I don't want to stop now.

Why don't you use the originals, go ahead if you want.

MR. PULVERMACHER: Yes.

JUDGE PLAINE: Go ahead and Mr. General Counsel, if necessary you can stand along side the witness and examine the cards.

Go ahead, sir.

BY MR. PULVERMACHER:

Q For the weekending --

MR. PULVERMACHER: By the way I am making a formal offer.

JUDGE PLAINE: Does General Counsel have any objection to thebatch being introduced?

MR. BLYER: No.

JUDGE PLAINE: R-4 is in evidence.

(The above referred document marked Respondent's Exhibit R-4 received in evidence, as of this date.)

BY MR. PULVERMACHER:

Q For the weekending October 19th, 1974, do you remember how many times you were on time or were late?

MR. BLYER: Objection, Your Honor.

JUDGE PLAINE: What's the objection?

MR. BLYER: We have the documents in evidence and they will reflect how many times he was late.

JUDGE PLAINE: It seems to me it's --

MR. PULVERMACHER: I will be glad to read it into the record.

MR. BLYER: They are in the record.

MR. PULVERMACHER: According to the record --

MR. BLYER: Your Honor, they are in the record. We don't need to have them read into the record.

MR. PULVERMACHER: I think I am entitled if something is into the record to put the evidence in in an accummulative form so it is understandable to anybody reading the record because it is significant.

JUDGE PLAINE: The question is do the time cards reflect late or not late.

MR. PULVERMACHER: They reflect late.

JUDGE PLAINE: They reflect late.

MR. PULVERMACHER: Yes, I am going to put it in the substance nature of it.

MR. BLYER: If their in there, they are in evidence.

A Four people, five.

Q And would you help me identify these people by giving

JUDGE PLAINE: Isn't that something you can simply total up for me in your brief.

MR. PULVERMACHER: I don't want to sit there with s shovel -- I want to make sure it guess all across.

JUDGE PLAINE: I shouldn't sit and the parties shouldn't sit while you read into the record what is in the record as evidence.

That's not helpful to the proceeding of the hearing.

MR. PULVERMACHER: All right.

Let the record note my objection to that procedure.

BY MR. PULVERMACHER:

Q I refresh your recollection if you said in the period from when you were hired to when you were discharged you were only absent two or three days the entire period?

JUDGE PLAINE: Hold it.

MR. PULVERMACHER: Yes.

JUDGE PLAINE: You are switching now from absent to time, is that it?

MR. BLYER: Absent to late.

MR. PULVERMACHER: The time I ruled out. I am on absence.

MR. BLYER: My objection is that he is misstating the record.

I don't believe there was any testimony on how many times he was absent.

Q And what you were putting into the boxes was finished

MR. PULVERMACHER: Well, let's go into it.

BY MR. PULVERMACHER:

Q How many times were you absent from the period when you first started to the end?

A Two, three, four times.

Q That's what my recollection was.

MR. BLYER: Thank you.

Q During the week of the 19th, were you absent two days and in that connection I show this.

(Handing document to witness.)

A I cannot tell you for sure that I was absent on my own account or I was told not to come.

Q But you were not there for those two days that week?

A If it is not punched there, it is because I wasn't there.

Q On the week of December 7th, would you tell me whether you were present in the morning?

(Handing document to witness.)

A 7th of December you said?

Q Wednesday.

A What date?

Q The middle column, the third column from either side.

A Those are days when I didn't come in the morning and I came at noon which may have been with permission or some other reason.

Q Which you don't now recall?

A No, I cannot.

MR. BLYER: What card were you referring to then?

MR. PULVERMACHER: For the record I was referring to the card of December 7th.

MR. BLYER: Thank you.

BY MR. PULVERMACHER:

Q And on December 21st, you were out two days; is that correct?

(Handing document to witness.)

A Where is that, sir?

Q I believe it was the second and third days of the week.

THE INTERPRETOR: Do you want to point it out to him.

MR. PULVERMACHER: This column and this column, the third and fourth columns there.

A Paid, why they put that, what is that sign, paid?

MR. PULVERMACHER: Repeat my question, Mr. Reporter.

(Whereupon, the reporter read back the last question.)

A But I don't know if it was because they asked me not to come.

Q Well, on one of these days is the notation of pay. I am asking —

THE INTERPRETOR: Even though he wasn't working you say?

A Those who came with the blouses and put them on the

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MR. PULVERMACHER: That is right.

A I must have been out, yes, if it says so on the card, he said.

Q On the week of the -- the 4th of January, did you work?

(Handing document to witness.)

A This must be the week that I didn't work because they told me not to come and asked me to talk -- call everyday, whenever I called, they said call tomorrow, call tomorrow, call tomorrow, it's slow.

Q The you didn't work that week?

A Yes.

Q This only happened once or did it happen more than once?

MR. BLYER: Objection, Your Honor, to the form of the question in the sense he is asking it happened once, does he mean one day, one time?

MR. PULVERMACHER: All right. I will withdraw it.

JUDGE PLAINE: All right.

BY MR. PULVERMACHER:

Q Is your testimony that you were told not to come into work that week; is that correct?

A Yes. It must be that week, yes.

Q Did you return the next week to work?

A It could have been a whole week and a little more than

a week too. Until they decided they want me to come to work.

Q And then I show the card for the following week which shows you didn't work?

(Handing document to witness.)

A So they were two weeks together.

Q And who had told you not to come in?

A Carmine.

Q When did he tell you not to come in?

A Everyday when I called him on the phone.

Q Did you call in on Monday?

A Everyday.

Q Well, I would have anticipated your answer to be --

MR. BLYER: Objection -- go ahead.

Q -- that you went in Monday to work, not called.

MR. BLYER: Objection, Your Honor, to the form of the question.

It doesn't pose a question to the witness. It's a statement of fact.

JUDGE PLAINE: Well, it's sought of a question, it's thekind of suggestion that a British barrister would say I would suggest --

MR. BLYER: Make the question more definitive.

JUDGE PLAINE: It's a question, it's a question, won't you have come each Monday, that's probably the question.

MR. BLYER: He had come in -- I think it would be

on the table and put it in the box?

preferable to state it that way.

JUDGE PLAINE: Put the question in that form.

MR. PULVERMACHER: I will accept it, it's a good thought and make this question.

BY MR. PULVERMACHER:

Q Did you go into work on that Monday?

THE INTERPRETOR: That Monday, which Monday?

MR. BLYER: Which one.

Q The Monday which would be reflected on the card of January 11th?

A IF I did -- if I came to work it would be punched here.

Q So you didn't go to work?

A I wasn't called.

Q Well, were you called to work every morning?

A Everyday.

Q Everyday somebody calls you to come in that morning?

THE INTERPRETOR: No, he calls.

Q You call in every morning?

A Everyday I call in the morning and they would say call tomorrow. The following day I will call in and they would say call tomorrow and then I would call again and they would say call tomorrow.

JUDGE PLAINE: Off the record.

(Discussion off the record.)

MR. PULVERMACHER: Thank you.

BY MR. PULVERMACHER:

JUDGE PLAINE: Back on the record.

BY MR. PULVERMACHER:

Q Mr. Arroyo, is it your testimony that every morning during the period of your employment which started in October that you called in to find out if you were to come into work?

A Yes.

MR. BLYER: Your Honor, I -- I think the question was answered before and quite differently and I think the witness is confused and I would appreciate it if the question would be put again if you like I can wait for cross-examination, but I don't think the witness understood the question.

MR. PULVERMACHER: I have no objection if you would like to ask him a question to straighten this particular thing out concerning the telephone call and I suggest since you think there is a confusion you proceed on that point with the permission of the court.

JUDGE PLAINE: Do you want the question and answer read back?

MR. BLYER: I would like the question again posted to the witness and see if he understand the question.

JUDGE PLAINE: I see.

MR. BLYER: As I understand the question he was asking for everyday of his employment.

MR. PULVERMACHER: That is correct.

MR. BLYER: All right. Would that be made clear to the

Q And is that the first time card you had working for Melange?

JA134

witness.

THE INTERPRETOR: Yes.

JUDGE PLAINE: Let's be sure on that.

THE INTERPRETOR: I ask him -- do you want me to repeat it?

MR. BLYER: For everyday.

(Interpretor repeated the question to the witness.)

THE INTERPRETOR: He is correcting himself.

He says only those two weeks which are not punched at all, during those mornings I called in the morning and they told me not to come, not all the period of my employment.

They will not call me to work.

Q Did they call you to work at every other time other than that two week period?

MR. BLYER: Objection, Your Honor.

It's obvious that some of these questions aren't being -- it's tough for the witness to understand and that question I think is a very difficult one to understand.

Can it be restated? Objection to the form.

JUDGE PLAINE: Yes, you know, obviously there are periods of time when the man was working and there was no need for calling in.

MR. PULVERMACHER: I am trying to get into the technique that was employed and things of that sort and I am suggesting whether the question is hard or not we have an interpretor

who certainly is capable and translating it.

JUDGE PLAINE: But we don't want to confuse the record and get a record that's inaccurate.

Now, it is my understandint at the present -- at the present point we have established that the witness called in every morning in that two week period you've identified by your cards of January 4th to January 11th.

MR. PULVERMACHER: Yes.

JUDGE PLAINE: Those are the --

MR. PULVERMACHER: Two weeks.

JUDGE PLAINE: Those are the two weeks in which he called in every morning and was told to call the next day but got no work during those two weeks. That is what you have established.

Now, let's take it from there.

THE INTERPRETOR: You are going to ask him a question I told him.

MR. PULVERMACHER: Okay.

BY MR. PULVERMACHER:

Q Who told you to call in on the Monday of the week of January 4th, the weekending January the 4th?

A The week that I didn't work?

Q Yes.

A Carmine.

Q When did he tell you this?

A It's suppose to be the day before I was not to come.

Q What did he tell you about not coming?

A That work was slow and the work was slow and -- because the work was slow with the two or three people he could manage there so I should call before I come and I should stay home.

Q All right.

We are talking about the first of the year.

How many people were working in that department about the first of the year?

A I believe five, six people.

Q You were the only one who was told not to come in according to your testimony?

A Also Varguez.

Q Varguez didn't come in?

A Yes.

Q And Carmine told you this I assume the Friday before?

A Yes.

Q You didn't tell us that before, though?

A Because you didn't ask me.

Q I leave the record stand.

The week of January 25th, did you work on Tuesday?

(Handing document to witness.)

A No, it is not -- it is not the punched there, I didn't work

Q Do you remember how much your last paycheck was?

A I believe it was for one day.

Q For one day.

What would the amount have been for one day?

A I don't recall.

Q You were always paid by a check?

A Yes.

Q And you had some way of knowing if you worked three days or four days.

How much the check should be for?

A Of course I knew.

Q I'm sorry.

A Of couse I knew.

Q So you worked two days the week ending February 1st, how much was the check for?

MR. BLYER: Objection, Your Honor.

JDUGE PLAINE: Counsel --

MR. BLYER: Are you telling him --

MR. PULVERMACHER: How much was your pay?

MR. BLYER: Excuse me.

Are you telling him that he worked two days because I don't think he said --

MR. PULVERMACHER: He just looked at the card and said he worked two days.

MR. BLYER: I thought his testimony was one day.

MR. PULVERMACHER: I know he said that but he also identified that he punched in two days that week.

JUDGE PLAINE: Counsel I am not helped at all by this witness gussing as to how many days he worked, how much his paycheck is.

You have specific records on this. This don't help me.

MR. PULVERMACHER: Well --

JUDGE PLAINE: I don't see where you are going with this line of questioning.

MR. PULVERMACHER: All right.

Let me shift a little bit and I think you will.

JUDGE PLAINE: All right.

BY MR. PULVERMACHER:

Q You said that the conversation that took place in the office on the Wednesday was on the 22nd of January; is that correct?

A What conversation?

Q In your direct examination by General Counsel for the National Labor Board.

A What did I mention?

Q All right. Let's start over again.

MR. PULVERMACHER: Your Honor, it is getting to 5 o'clock, I wonder if this is a -- there is no good point to stop here, but I must suggest that I have a fairly long cross-examination still to come. We might as well stop here as any

place.

JUDGE PLAINE: Well, I wouldn't like to break up -- break this up, we have lost so much time already.

Off the record.

(Discussion off the record.)

JUDGE PLAINE: Let's go back on the record.

This appears to be an appropriate point to take a recess for the day.

I would like to ask counsel for the Respondent and any others who plan to cross-examine this witness if they would organize their cross-examination tonight so that we can expedite it tomorrow and not -- not spend unnecessary time --

MR. PULVERMACHER: Your Honor --

JUDGE PLAINE: I am not being critical. I am simply making this request.

It sometimes helps having the benefit of thinking about the -- what transpired, how to get at things a little quicker by organizing one's examination.

MR. PULVERMACHER: Your Honor, the problem is to develop with this witness -- he says one thing and I think he means it and then we find out a few questions later that there has been confusion and while it is partly a language barrier, I rather suggest to you it is something different with this witness.

JUDGE PLAINE: This remains to be seen.

We will resume tomorrow morning at 9:30.

(The hearing adjourned at 5:09 p.m.)

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PROCEEDINGS

JUDGE PLAINE: On the record, please, gentlemen.

This is the continuation of the cross examination of Mr. Arroyo.

Mr. Pulvermacher, will you proceed.

MR. PULVERMACHER: Yes, I will.

CROSS-EXAMINATION (CONTINUED)

BY MR. PULVERMACHER:

Q Mr. Arroyo, who was the one who told you to call in in December when you started that procedure of calling in everyday?

A Those two weeks you mean?

Q Yes.

A Carmine.

Q When did he tell you to start calling in?

A The last day I worked.

Q You mean the Friday preceding the Monday in which this started?

MR. BLYER: Objection, your Honor.

JUDGE PLAINE: What's the objection?

MR. BLYER: That's a misstatement of the facts, I believe.

MR. PULVERMACHER: I'll withdraw the question.

JUDGE PLAINE: All right.

BY MR. PULVERMACHER:

Q When did Carmine, what day of the week did Carmine tell you to start calling in?

MR. BLYER: Objection, again, your Honor.

I think this causes the same problem that we had yesterday.

The witness is being required to guess at something which if he's right, he's lucky; if he's wrong, it means nothing.

Wouldn't it be much better, since he's already testified that he was told the last day that he was working, if he were shown the cards in evidence -- really, we have the answer already on the record, he was told the last day he worked. We can look at the cards and see what the last day he worked was before this period of time.

MR. PULVERMACHER: I suggest, your Honor, that cross examination tests the witness' veracity at every stage of the game.

This is an appropriate one.

JUDGE PLAINE: Well, there are certain things that I find very difficult to be a test of veracity, and that Is trying to remember days of weeks

worked, not worked and so on when there are timecards that show those things. This does not test veracity, in my opinion.

MR. PULVERMACHER: It tests memory, your Honor, and memory is a mass of recounting accurately --

JUDGE PLAINE: I would challenge you if you were asked what you did on several days last December, several days in January. I just don't regard this as the kind of test where we have a repetitive thing going on, a man working, not working, working, not working, to remember the precise days. I just don't regard this as proof of anything.

If you can develope your cross examination in a way without that, I think it would be far, far, far better.

MR. PULVERMACHER: Yes, sir.

BY MR. PULVERMACHER:

Q Was the last day you worked in December, the day of the party?

A Yes.

Q And was that the day that Carmine told you to start calling in?

A No.

When I came the first time.

Q After the party?

A Yes.

MR. PULVERMACHER: For the record, I am showing the witness the timecard for the week ending December 28th, '74.

(Handing.)

Also, a timecard for the week ending January the 4th.

THE INTERPRETER: This is December 28th.

MR. PULVERMACHER: I'm sorry, what did I say?

THE INTERPRETER: You said November.

MR. PULVERMACHER: I'm sorry; I meant for December the 28th.

THE INTERPRETER: Okay.

BY MR. PULVERMACHER:

Q The timecard for December 28th indicates that you worked on the second day of the week and that the second day of the week there was a party.

Is that correct?

A Yes.

Q Did you work after that party?

A No.

JUDGE PLAINE: You mean in that week?

MR. PULVERMACHER: Yes, your Honor.

THE INTERPRETER: The witness stated no.

JUDGE PLAINE: Okay.

BY MR. PULVERMACHER:

Q Now, when did Carmine tell you to start calling in?

A Before the party, before or after the party, I don't remember exactly.

Q But that was the day?

A I don't remember whether it was before or after the party.

Q I don't mean in relation to the party, I mean in relation to the day.

Was it that day?

A I am not sure if it was that day or not.

Q Did Carmine say anything else to you when he told you to start calling in?

A That the work was slow, that the work would keep being slow and that while work was slow, I should call in.

Q He didn't tell you that your work was poor?

A No.

To the contrary.

Q That you made some mistakes?

A No, never.

Q Did anybody tell you in that time, in December,

that you made some mistakes?

A No.

Q Nobody did?

A Only about one error that took place before, for which we all were called attention.

MR. PULVERMACHER: Would you read that answer back.

(Record read.)

BY MR. PULVERMACHER:

Q Was that the error for which Louis Martinez was fired?

A No.

Q What was the nature of the error that you were told about?

A An error in which my name was on the paper.

They called the entire Shipping Department and they said that he who committed another error will be fired.

Q What was the error that you were called in about?

A Also about the blouses.

Q You mean about how many blouses were packed in a box?

A No.

About the color and the style which were brought mistakenly by those who pick the merchandise.

Q Now, you were given the invoice to compare with the goods the pickers picked, is that not -- is that not correct?

A Yes.

But since one had to work very fast, he couldn't pay attention too much in all this.

Q Wasn't it your job to verify that the pickers picked the right blouses?

A No.

My work was just to put them in the box.

Q Whose job was --

A Not to verify whether the pickers did a good job or not.

Q Whose job was it to verify whether the pickers did it properly?

MR. BLYER: Objection, objection, your Honor.

The question assumes that someone in fact had that job.

MR. PULVERMACHER: It does.

MR. BLYER: And that's not established on the record, your Honor.

JUDGE PLAINE: Well, you better back up and ask the question.

MR. PULVERMACHER: All right.

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BY MR. PULVERMACHER:

Q Did anybody have the job to see that the pickers picked the right job, as set forth on the invoices?

A I believe that Norris was the one who had to do that because sometimes when the pickers put the blouses on the table for me to pack, Norris will look and if he saw it was wrong, would call attention of the pickers.

Q Can you give me the name of the person you're referring to?

A Norris.

MR. PULVERMACHER: Norris?

THE INTERPRETER: He said Norris.

MR. PULVERMACHER: I'm sorry, I missed the answer on that.

BY MR. PULVERMACHER:

Q. Is there a difference between the Shipping and the Packing Department?

A I believe it's altogether there.

Q Well, isn't it a fact that the packing is where they put the material into the box?

A Yes.

Q And the shipping is where they actually put the labels and put it together to send in through the mail

or what other transportation?

A Yes.

Q And isn't it a fact that Norris spend most of his time in the Shipping Department?

A He spends the time in the shipping and the packing because it's altogether.

The table at the desk where he is sitting is altogether, there is no wall to separate anything there.

Q I understand that.

How far from you did Norris sit?

A About the same distance between you and me.

MR. PULVERMACHER: Will counsel stipulate that this is about 12 feet?

MR. BLYER: Yes.

MR. PUVLERMACHER: Thank you.

MR. BLYER: Probably a little -- probably a little less. I don't know. Ten or 12 feet, okay.

MR. PULVERMACHER: Ten or 12 feet?

MR. BLYER: Yes.

BY MR. PULVERMACHER:

Q And Norris stayed behind his desk most of the time?

A No.

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There is another girl who also does the invoicing. Sometimes she's working and he's tending there and checking to see if the blouse or the merchandise is the right merchandise and things like that.

Q This is Norris who is checking?

A Yes.

Q Now, didn't you testify yesterday, Mr. Arroyo, that it was your responsibility to check the style, the color, the count and sign your name to the invoice after you done this?

A Yes.

Q And I understand your testimony, it's somewhat at variance today.

Is that correct?

A Why?

Q Because I understood you to say you did not have the responsibility to check that the pickers picked against the invoice but that it was Norris' responsibility.

THE INTERPRETER: I'm sorry, you are talking at the same time.

MR. PULVERMACHER: I didn't finish the question.

BY MR. PULVERMACHER: (Continued)

Q But that it was Norris' responsibility?

A. You asked me whether my responsibility was to check whether the pickers picked the right merchandise, and this is not my responsibility.

My responsibility is to check the merchandise before I put it in the boxes, but not whether the pickers have picked up the wrong merchandise when they do the job.

Q. Well --

A. Because this is Norris' obligation, he's in charge of that.

Q. Now, Mr. Arroyo, what did you check before you put it in the box?

A. The style, the color and the quantity of blouses.

Q. Did you in fact check the style, quantity and color of blouses that went in the box?

A. Yes.

Q. What did you check it against?

A. With the invoice.

Q. So that if there was a mistake in the quantity, color or style, it was your job to pickup this discrepancy, or error?

A. Nobody is free from mistakes. And maybe that day I made that mistake.

Q. That wasn't what I asked you.

MR. PULVERMACHER: I request that the witness have the question put to him again.

Would the Reporter read it?

JUDGE PLAINE: Mr. Reporter.

(Record read.)

A It wasn't only my job, it was also the job of those who pick, the pickers.

MR. PULVERMACHER: May I ask the Court to require the witness to answer yes or no to the question posed.

JUDGE PLAINE: Well, he's indicated that it was his responsibility but that he claims that it was a shared responsibility.

BY MR. PULVERMACHER:

Q Well, the pickers --

MR. PULVERMACHER: I hate to belabor the point, but I think a direction will be of assistance.

JUDGE PLAINE: I think it's conceded that he had a responsibility.

MR. PULVERMACHER: Well, if the Court sees it that way, that's all right with me.

JUDGE PLAINE: Yes, he's conceded that he has such responsibility.

MR. PULVERMACHER: Thank you.

BY MR. PULVERMACHER:

Q Did you ever find the situation where the pickers had given you ten garments -- and I'm using this as an example -- and you were only supposed to have five garments?

A Yes, many times.

Q And what did you do with them?

A I put in the box that I had to put according to the invoice, and the rest I returned.

Q Isn't it a fact, Mr. Arroyo, that you had problems because you weren't counting accurately?

A One day this happened.

MR. PULVERMACHER: What was the answer.

THE INTERPRETER: He said one day this happened.

BY MR. PULVERMACHER:

Q And who picked this mistake?

A Maybe another worker or Norris.

Q You don't know?

A I don't remember.

Q I see.

And isn't it a fact, Mr. Arroyo, that this is what Carmine had been talking to you about before the Christmas party, that you were putting too many garments in the box?

A. Perhaps.

I wasn't the only one who was being blamed for these things and other workers were doing it and they were also called attention for it.

Q. What was Louis Martinez fired for?

JUDGE PLAINE: If he knows.

MR. PULVERMACHER: If he knows.

A. I believe it's because he was always late. I don't know, but I believe also because he had made some mistakes. I am not sure about this.

Q. Did Norris ever talk to you about doing a bad job in December?

A. The same day that Carmine called the attention to everybody.

Q. So Norris and Carmine spoke about the same incident?

A. Not Norris because Norris receives the orders from Carmine. It lies like Carmine told it to Norris for him to tell it to me, I should be more careful with the blouses.

Q. Isn't it true in your statement to the National Labor Relations Board that you said, "In December, Norris and Carmine told me that I had done a bad order"?

A. Yes, they called my attention.

Q No, no.

They called your attention to it or you told them what I quoted?

A I don't understand.

JUDGE PLAINE: If we're going to get into the business of precise statements in a Board affidavit, the better practice is to show the witness the affidavit and let him tell you whether that represents accurate testimony.

MR. PULVERMACHER: Let the record show that I've handed the witness, the Spanish statement which bears the witness' signature. I refer the witness to Paragraph ten on the last page.

THE INTERPRETER: Paragraph ten?

MR. PULVERMACHER: Paragraph ten.

BY MR. PULVERMACHER:

Q I ask the witness to read Paragraph ten.

THE INTERPRETER: You want him to read this paragraph to himself?

MR. PULVERMACHER: Yes.

JUDGE PLAINE: Yes, please.

BY MR. PULVERMACHER:

Q Have you read it now? No, just Paragraph ten.

A Yes.

Q Is that the statement you gave to the National

Labor Relations Board's agent?

A. Yes.

Q. And is that an accurate statement?

A. How many times am I to tell you yes?

Q. Fine.

Now, in that statement, Mr. Arroyo, you acknowledge the error was your error, do you not?

A. Yes.

MR. BLYER: Your Honor, I'd like -- my objection is a little untimely, but I would move that the question and answer be stricken, or at least -- again, that was a misstatement of the facts.

The statement, as I read it, does not at all suggest what Mr. Pulvermacher says. If you read the second sentence, I think he might agree and perhaps make my objection unnecessary and restate the question or at least ask the witness about it.

MR. PULVERMACHER: I think that's proper redirect.

JUDGE PLAINE: Well --

MR. PULVERMACHER: The witness has seen the entire statement. In the statement he uses language in the first sentence which he doesn't recall necessarily in the second sentence. I'm trying to get him to acknowledge various factors in that

paragraph. I think it's an improper objection.

JUDGE PLAINE: This business of taking a single statement and taking it out of context creates misapprehensions in the record and for the witness.

Counsel is perfectly within his rights to call your attention to the fact that something immediately following or preceding modifies what you have said.

MR. PULVERMACHER: Let me --

JUDGE PLAINE: So why don't we try to straighten it out.

MR. PULVERMACHER: Let me read into the record for this purpose the entire paragraph ten.

"In December, Norris and Carmine told me that I had done a bad order. I don't recall if it was my order or something was done badly. I think that was the only other time that they spoke to me about my work."

MR. BLYER: I think that's all you need.

MR. PULVERMACHER: I want the whole paragraph in.

"I never came in late to work. During the entire period that I was working there, I was out two or three times, and I always called the company

before being out."

May I ask the Interpreter if in his interpretation, reading the Spanish, whether the English is properly translated?

THE INTERPRETER: Yes, it was.

MR. PULVERMACHER: Thank you.

BY MR. PULVERMACHER:

Q Now, Carmine and Norris said you had done a bad order; is that correct?

A Yes.

Q But you don't recall if that is a correct statement or not?

A Yes.

Q Now, did they ever speak to you about a bad order any other time?

A The time when I was fired.

Q What did they tell you at that time?

MR. BLYER: I only object, your Honor, because it's very repetitive. I think he's already testified a number of times what he was told by Carmine.

If you want to hear it again, its' all right with me.

JUDGE PLAINE: Well, let's do it again.

MR. PULVERMACHER: I don't believe I did it in cross.

I mean, you may have done it on direct but just because you've done it, doesn't mean I'm now foreclosed from going into it.

JUDGE PLAINE: Well, I don't recall whether it was covered in your cross or not, so let's get it on the record again even if it is repetitive.

MR. PULVERMACHER: Yes, sir.

BY MR. PULVERMACHER:

Q What did Norris tell you about your being fired?

MR. BLYER: Objection, your Honor.

Again it misstates the record.

I don't think there's any testimony that Norris told him anything about being fired.

BY MR. PULVERMACHER:

Q Did Norris -- strike that.

Who spoke to you when you were fired?

A I asked Norris why my card was not on the rack. And he told me that Pete had said that I was fired.

Q That was all that was said?

A I tried to explain to him what had more or less happened. And he listened to me.

Q What had happened?

What were you saying had happened?

A I told him that Vargas and I were working fast

because we had to go fast with our work due to the fact that the orders had to go out fast.

Vargas was putting the blouses into the boxes and I was closing the boxes and put my name and sometimes his name.

The following day Vargas told me that the order had been wrong. So that Wednesday when I came in I didn't find my card on the rack, I told it to him. And Norris told me he couldn't do anything, that I was already fired.

Q And you believe it's because of this mix up in the order which you -- concerning which you and Norris were packing and you were signing?

MR. BLYER: Objection, your Honor, to what is --

JUDGE PLAINE: Yes, I want to hear the objection.

MR. BLYER: I object to any question what his belief was.

JUDGE PLAINE: It seems to me that there are any number of reasons that might have entered into it.

What he thingks he was fired for is really not relevant at this point, is it?

MR. PULVERMACHER: Yes, I believe it is, your Honor, in view of the nature of the N.L.R.B.

complaint here.

MR. BLYER: What happens if he's right or wrong, what does it matter?

MR. PULVERMACHER: I think it makes all the difference in the world.

MR. BLYER: Well, I'm suggesting, your Honor, that --

JUDGE PLAINE: Wait a minute.

I want to make it very clear that I want no witnesses or persons in this room, other than counsel, speaking out of turn. Now, let's get that straight. This is not -- this is not a meeting, this is a trial in a courtroom. People who address the Court are going to be counsel and the witnesses, the Interpreter, the Reporter. That's all I'm going to listen to. I don't want any talking out of turn.

Now, let's get back to the objection.

Mr. Blyer.

MR. BLYER: I think it calls for a subjective explanation. Certainly -- and I think it's objectionable on that ground.

Although this objection goes to the weight, it certainly couldn't be given much weight, whatever his answer would be. Certainly you're not going to base any unfair labor practice on his belief

that he was fired for what the complaint alleges.

MR. PULVERMACHER: May I suggest that we excluded all witnesses, including the witness testifying, because I think argument at this point can prejudice answers. I'd like to have an unrestrained argument on this point.

MR. BLYER: Well, I've finished my remarks, your Honor.

JUDGE PLAINE: I don't think we have to exclude the witnesses.

Now, I simply want to know from you, counsel, why you feel this answer will help me arrive at a judgment.

MR. PULVERMACHER: Your Honor, I would like to make argument, but I'd like to make it directly out of the presence of the witness.

JUDGE PLAINE: All right.

Step out of the room for us a minute.

THE INTERPRETER: He's asking why?

JUDGE PLAINE: Oh.

We're having an argument, a legal argument as to the effect of your testimony. Counsel would like to say things that would not prejudice anything that you say.

We'll call you right back.

(Witness excused.)

JUDGE PLAINE: Yes, Mr. Pulvermacher.

MR. PULVERMACHER: The nature of the complaint is that this witness was fired for union activity. If in fact he believes he was fired for the improper manner in which he conducted his job, I think it goes right to the charge itself. This bears directly on point.

His own subjectivity is a significant thing as to why he was fired and why the NLRB has brought charges that it was his union activities for which he was fired.

JUDGE PLAINE: Mr. Blyer.

MR. BLYER: Your Honor, it's immaterial what he believes, it's immaterial.

His own subjective belief I think is immaterial.

The facts will show what the facts will show.

He may not be aware of all of the facts.

A charge was filed. We investigated it. It's our complaint; it's our allegation, it's not his.

He came in, gave us information.

We then make the determination, not him.

MR. PULVERMACHER: I think all of the

fact are relevant on the question of whether he was discharged for union activities.

JUDGE PLAINE: He's not the charging party.

MR. PULVERMACHER: It's not a question of the charging party, it's a question of did he -- the NLRB has brought a charge that it was union activities.

JUDGE PLAINE: Yes.

MR. PULVERMACHER: It must be based upon some information.

JUDGE PLAINE: A charge by --

MR. PULVERMACHER: Neither counsel nor his agent nor I were present at the time or are fully familiar with all of the details that went on.

This man has testified to two situations in which errors were made that were charged to him. He doesn't acknowledge that the errors were made, but he does recognize that there were two situations brought to his attention in which somebody on behalf of the company said that you made a mistake. And it seems to me, your Honor, that from all that's gone on and the statement that's in front of me, that it's his own belief that he was fired for a bad job, not for union activities.

MR. BLYER: Your Honor, I would just repeat, he could be wrong.

MR. PULVERMACHER: He's your witness.

MR. BLYER: You misread the complaint, counsel.

The complaint is one that's issued by the NLRB, not by Nelson Arroyo. Just as if he came in and he told us that he believes he was discharged for union activities, what materiality is that?

It has no materiality.

JUDGE PLAINE: In other words, you're saying that if he came in and complained that he had been fired for union activities and you reached the conclusion that he had not been, you wouldn't issue a complaint.

MR. BLYER: That's correct.

He's not aware of all of the facts.

More than that, your Honor, he's not aware of what -- I think it's fair to say that he's not aware of the, I think, the important facts or many of the facts.

JUDGE PLAINE: It seems to me, Mr. Pulvermacher, that is relevant is what he was told.

Now, if he can recollect what he was told,

that will be of some possible value.

It may be that he was told something falsely or erroneously or truthfully; I just don't know.

But it seems to me, Mr. Pulvermacher, that that is the test on which I must go. I must go on the objective circumstances of the discharge and taking everything into account that surrounds it.

So that getting a subjective answer would not be -- would not be determinative in here.

If the witness told you I was fired because of union activities, you wouldn't necessarily accept that, would you?

MR. PULVERMACHER: No.

I think --

JUDGE PLAINE: And at the same point, at the same time, counsel, General Counsel is saying that because he says something differently, he isn't necessarily correct. He's just making his judgment on what he regards as the objective facts and you're going to make your judgment on what you think are the objective facts.

MR. PULVERMACHER: But by the same token even if the witness said he was discharged for union activities, I clearly believe that the Court would have

let such a statement come in.

By the same token that since the negative has been coming out at this point, I don't understand the reason for an inconsistency of approach.

MR. BLYER: I don't see why the negative is coming out.

JUDGE PLAINE: Well, his point was that he's objecting to any question in regard so that he would object -- so that he's objecting initially before any testimony is taken on this area.

MR. BLYER: In addition, your Honor, Mr. Pulvermacher himself conceded, as he interprets the evidence, that he acknowledged that there were errors made, not necessarily that they were his.

Now, for him to then conclude that the evidence is leaning in such a direction that he would automatically say I was fired because I made errors, is quite inconsistent if Mr. Pulvermacher has already said that he's not acknowledged that he's made any errors.

We also have an abundance of evidence that other people were at fault.

MR. PULVERMACHER: I don't --

JUDGE PLAINE: I think I'm going to resolve the evidence at this point.

MR. PULVERMACHER: May I correct the record.

General Counsel misperceives my approach.

I have been after the point that he has acknowledged that he has been told that it was his error, though he doesn't acknowledge it.

And whether or not --

JUDGE PLAINE: Well, he did partially acknowledge the responsiblity.

MR. PULVERMACHER: Yes, there's an equivocal response.

JUDGE PLAINE: Yes.

MR. PULVERMACHER: But it's really unimportant whether or not it was his error, I think it's the reasonable necessity of the Employer to look to him to do the job in a particular way and to discharge him if that was in fact not done.

JUDGE PLAINE: Yes.

MR. PULVERMACHER: And I think the defense is twofold here, and it goes to the fact that he had been hired back in September or October of -- I believe it was October, mid-October, discharged right about the Christmas party day, and then there's a two and a half week hiatus where the Respondents have not put in any testimony, and then he comes back.

doing a different job, and then he's fired again.

Now, he only wants to acknowledge the firing on one occasion.

The Respondents, your Honor, I suggest will put on evidence to show that he was fired in December but because Carmine wanted to see him back and give him help, keep the kid here and productive he was given another job and he didn't do that one, either. Now, that's going to be the thrust of the testimony.

So I think it is significant whether we are dealing with his union activities or whether we're dealing with his actual working function and what he believed he was fired for.

But I see the Court doesn't want to let that in.

JUDGE PLAINE: I'm inclined to deal not with the subjective reaction of the witness but with the objective facts surrounding the discharge.

MR. PULVERMACHER: Yes, sir.

JUDGE PLAINE: When we call him back, you're perfectly at liberty to ask him, was he told -- was he given any reason and what his response was and so forth?

Okay?

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MR. PULVERMACHER: Well, I think on that point this witness has said that he was told something by Vargas the night before and then he explained himself to, I believe, Norris, however I'm not certain of that, and that it was a -- that the situation was concluded and nothing further would be considered, I think is the import of his testimony.

JUDGE PLAINE: You think it's been covered?

MR. PULVERMACHER: I think it's been covered, unless -- he doesn't indicate anybody else talked to him and I'm satisfied with his answers there.

JUDGE PLAINE: I see.

MR. BLYER: Your Honor, I think --

MR. PULVERMACHER: The ruling, as I understand it is, is not to ask him his subjective understandings.

JUDGE PLAINE: That's what I'm going to rule.

You have an automatic exception.

MR. PULVERMACHER: Okay.

MR. BLYER: I did make an error when I made an objection with regard to who told Mr. Arroyo about being fired. I thought for a moment it was

Carmine. I think both on direct and cross he testified it was Norris.

JUDGE PLAINE: Yes.

MR. BLYER: I made an objection that was wrong.

JUDGE PLAINE: Well, let the record reflect that I'm honoring General Counsel's objection to the question of the witness answering his beliefs as to why he was fired.

We can call the witness back.

(Witness returns.)

JUDGE PLAINE: Mr. Arroyo, we have settled the legal problem. There is nothing for you to be concerned about.

BY MR. PULVERMACHER:

Q You told us of a conversation in December with Norris and Carmine.

How long before the Christmas party did that take place?

A I don't remember. Maybe a month before.

Q But quite some period of time before?

A I don't recall.

Q Now, in that conversation, Carmine and Norris said that if there were anymore packing mistakes, you or the people he was addressing would be fired.

Is that correct?

A Yes.

Q And after that Louis Martinez was fired, was he not?

A Yes, possibly.

Q Now, it's your testimony that work was slow in the early part of January of 1975 and for this reason you were told to call in.

Is that correct?

MR. BLYER: Objection, your Honor.

JUDGE PLAINE: Hold it.

MR. BLYER: It was not his testimony that work was slow, it was his -- and again I think it's a misstatement of the testimony.

It was his testimony that he was told that work was slow.

JUDGE PLAINE: Can you make that clear?

MR. PULVERMACHER: I will take that amendment.

JUDGE PLAINE: All right.

Mr. Interpreter, please make that clear to the witness.

THE INTERPRETER: Yes, sir.

A Exactly.

Q Who told you that?

A. Carmine.

Q. And it was also your testimony, Mr. Arroyo, that Vargas was also suspended, laid off at that same period of time.

Is that correct?

A. Yes.

Q. And Vargas lives in the same neighborhood as you do, does he not?

A. Almost.

Q. Well, you saw -- you see him from time to time after hours, don't you?

A. Yes.

Q. You told the NLRB, "I never came in late" --

MR. BLYER: Objection, may I object, your Honor?

I don't think that's a proper way to conduct questioning.

The statement is to be used for inconsistent statements, you know, not to read into the record.

The witness is here. He can ask him a question.

JUDGE PLAINE: Put the particular --

MR. PULVERMACHER: I will withdraw the question. I will start anew, your Honor.

JUDGE PLAINE: All right.

BY MR. PULVERMACHER:

Q I believe when I started the cross, you said you were late just a couple of times.

Was that your testimony?

A Yes.

I don't recall -- as far as I recall, a few times.

Q And that your working hours started at eight a.m., I believe you stated.

Is that correct?

A Eight-thirty.

Q Eight-thirty?

A Now that I recall, it's 8:30, not eight o'clock.

MR. BLYER: May we have a stipulation to that effect?

MR. PULVERMACHER: We may have a stipulation that working hours were 8:30 to four, if that is acceptable, if that's what you wish.

MR. BLYER: Yes.

Thank you.

I so stipulate, your Honor.

JUDGE PLAINE: Okay.

The stipulation is accepted.

Proceed.

BY MR. PULVERMACHER:

Q Yet you told the National Labor Relations Board something else, did you not?

MR. BLYER: I would object, your Honor, again based on form.

I'm not sure what he is referring to when he says something else.

JUDGE PLAINE: Why don't you now show him what you think is the inconsistent statement?

MR. PULVERMACHER: All right.

Mr. Interpreter, would you show him Paragraph ten, starting with the fourth sentence.

THE INTERPRETER: Paragraph tne?

MR. PULVERMACHER: Paragraph ten.

Let me show you which sentence I'm referring to (Indicating).

THE INTERPRETER: You want him to read for himself?

JUDGE PLAINE: Yes, Mr. Interpreter.

THE INTERPRETER: You want him to read it to himself?

JUDGE PLAINE: Yes, and then a question will be asked.

THE INTERPRETER: Okay, sir, the witness has read it.

BY MR. PULVERMACHER:

Q Which is correct, you were never late as you told the NLRB or as you've testified today?

A Sometimes I did.

Q Sometimes you did what?

A. Sometimes I arrived late, yes.

Q. So that what you told the NLRB was not correct?

MR. PULVERMACHER: May we go off the record for a moment, your Honor?

There seems to be a problem in translation.

JUDGE PLAINE: Here we go again.

We're off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

THE INTERPRETER: There was no error in translation, it was my misinterpretation of one word.

JUDGE PLAINE: Is there a question pending?

MR. PULVERMACHER: Would the Reporter check it?

JUDGE PLAINE: Is there a pending question, Mr. Reporter?

(Record read.)

A. It could be so, yes.

Q. Now, prior to this two and a half week hiatus of employment, you were packing the new goods that were brought over by the pickers; is that correct?

A. Yes.

Q. And when you came back after the two and a half week hiatus, you were doing another job; is that correct?

A. As I said before, there were a bunch of packages that had been returned. Those packages had to be opened up, take out the blouses, to pick up those which were damaged and those which they were going to stock. This is what I had to do.

MR. PULVERMACHER: Would General Counsel stipulate with me that the witness has testified to the returns of the business?

MR. BLYER: It sounds like it.

JUDGE PLAINE: Return of goods?

MR. PULVERMACHER: Yes.

MR. BLYER: It sounds like it.

JUDGE PLAINE: Okay.

BY MR. PULVERMACHER:

Q. And you did this for the entire time when you returned until you were fired?

A. No.

Q What else did you do?

A After I finished doing this work, as I just explained, what I just explained about, I started to do the same work I used to do before.

Q And did you have any errors brought to your attention for work you were doing when you were now in the packing?

A No, until the day I was fired.

Q About the time or shortly before the time you were fired, was business very busy?

Were you very busy?

A So-so.

Q Now, in your direct testimony you said you were fired on January 22nd.

THE INTERPRETER: January second?

JUDGE PLAINE: January 22nd.

BY MR. PULVERMACHER:

Q Is that correct?

A Yes.

Q What fixes that date in your mind?

A Because that day when I was fired, which is the day when I didn't find my card on the rack, I told it to Quinones and Quinones wrote it down in his diary.

MR. PULVERMACHER: Does Mr. Quinones have the diary here today?

MR. QUINONES: Yes, sir.

MR. PULVERMACHER: Would you produce it, please?

JUDGE PLAINE: Show it to counsel first, please.

MR. BLYER: Here.

(Handing.)

BY MR. PULVERMACHER:

Q So you told Mr. Quinones the day you were fired and --

A Yes.

MR. BLYER: May we get a stipulation as to what the diary reflects?

MR. PULVERMACHER: I will stipulate that a pocket diary produced by Mr. Quinones says, for January 22, 1975, "A.B.C."-- underlined -- "Nelson fired-Stoll."

I will further stipulate that the word "Nelson" refers to the witness here.

MR. BLYER: I'll accept that.

Thank you.

BY MR. PULVERMACHER:

Q Now, I assume your testimony is that when you were fired, you went down and you saw Mr. Quinones.

Is that correct?

A. Yes.

Q Independently of that note in Mr. Quinones' diary, do you have any way of knowing it was January 22nd that you were fired?

A. I remember that it was that day.

Q But if Mr. Quinones had not written that down, would you have had any other memory?

JUDGE PLAINE: Excuse me, counsel.

I think that's argumentative, really.

MR. PULVERMACHER: No.

I'm just trying to --

JUDGE PLAINE: Well, there is --

MR. PULVERMACHER: I'll withdraw it.

JUDGE PLAINE: -- you are suggesting a hypothesis that isn't so. It was written down.

MR. PULVERMACHER: Yes, sir.

BY MR. PULVERMACHER:

Q When was the last time you spoke to Mr. Quinones to ascertain the date you were fired?

A. Immediately after I was fired.

JUDGE PLAINE: May we have a stipulation as to who Mr. Quinones is?

MR. BLYER: Yes.

I would offer that Mr. Quinones is an organizer with Local 155, your Honor.

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JUDGE PLAINE: Very good.

Thank you.

MR. PULVERMACHER: So stipulated, your Honor.

JUDGE PLAINE: The stipulation will be received.

Proceed.

BY MR. PULVERMACHER:

Q Since the day you were fired, did you discuss with Mr. Quinones that testimony relating to the fact you state you were fired on January 22nd?

A Yes, many times.

Q You discussed your testimony with Mr. Quinones many times; is that correct?

JUDGE PLAINE: Well, you're now changing your question.

MR. PULVERMACHER: I am changing it and I am asking this further question.

MR. BLYER: You can ask that question but not the way you did it.

JUDGE PLAINE: You can ask him that question, but don't ask him to concede that that was just what he said. He didn't quite say that. Your question was very narrow.

Read back counnel's question.

BY MR. PULVERMACHER:

Q Did you discuss your testimony with Mr. Quinones many times?

JUDGE PLAINE: Wait a minute.

Read back the question before that one.

(Record read.)

JUDGE PLAINE: That's a different question.

MR. PULVERMACHER: It is a different question.

JUDGE PLAINE: The testimony that the witness has given is to a whole range of things, not about the day that he was fired.

Now, I suggest that the question is improper at this point.

If you want to reframe the question, you may.

THE INTERPRETER: Your Honor?

JUDGE PLAINE: Yes.

MR. PULVERMACHER: The Interpreter wishes to make a comment.

THE INTERPRETER: I would like to clarify something for translation off the record. It has nothing to do with this case exactly.

JUDGE PLAINE: Yes.

THE INTERPRETER: In a discussion in English, in English sometimes it means did you have a discussion about this or that, is just a friendly discussion, a conversation.

In Spanish, discussion and conversation are two different things.

So when you say discussion, I really don't know if it's an angry discussion or just a regular conversation about it.

JUDGE PLAINE: That isn't the problem, Mr. Interpreter.

THE INTERPRETER: For me it's a problem.

JUDGE PLAINE: I see.

We will try to avoid that for you.

THE INTERPRETER: Thank you.

JUDGE PLAINE: The problem here was that the witness was specifically asked, did he discuss the matter of the firing?

THE INTERPRETER: If he talked with him abou it.

JUDGE PLAINE: About the firing, right.

THE INTERPRETER: Okay.

JUDGE PLAINE: And his answer was yes, many times.

Now we went to get on if there was some

other discussion you want, let's discuss that separately.

MR. PULVERMACHER: Your Honor, when I use the term discussion, I mean it in the sense of conversation.

THE INTERPRETER: Okay.

So I know.

MR. PULVERMACHER: When I say with anger, I mean dispute. I will attempt to keep it clarified.

JUDGE PLAINE: Thank you.

THE INTERPRETER: I just had to clarify it, your Honor.

JUDGE PLAINE: That's all right.

Proceed.

BY MR. PULVERMACHER:

Q Now, in your direct testimony, as I recall, you said you did not work the day before you were fired.

Is that correct?

A That's true.

Q What were you doing the day before you were fired?

MR. BLYER: Objection, your Honor.

It's irrelevant.

It doesn't matter what he was doing.

JUDGE PLAINE: Does it make any difference

to your case, counsel?

Do you have an objective in mind?

MR. PULVERMACHER: I do have an objective in mind, your Honor, but I'm not going to get to it, so let me try it another way.

BY MR. PULVERMACHER:

Q You've seen the timecard for the week ending February one, '75, have you not?

MR. PULVERMACHER: No, it's not there, Mr. Interpreter, here it is.

(Handing.)

A I see it.

Q And that timecard indicates your employment on the second day of the work week ending February one, 1975?

A Yes.

JUDGE PLAINE: That the timecard shows what?

MR. PULVERMACHER: That he worked the second day of his work week of February one, 1975.

MR. BLYER: Your Honor, maybe this would be helpful.

Last night I Xeroxed an extra copy.

(Handing.)

JUDGE PLAINE: Thank you.

MR. PULVERMACHER: It's the next to last card, your Honor.

JUDGE PLAINE: Now, which entry were we talking about, counsel?

MR. PULVERMACHER: This is the first one and that's the second one.

JUDGE PLAINE: I'm sorry, which is the first one you were talking about?

MR. PULVERMACHER: This one (INdicating).

JUDGE PLAINE: I see.

MR. PULVERMACHER: And this is the second day.

JUDGE PLAINE: So the second column with figures is the second day, is that what you're saying?

MR. PULVERMACHER: Yes, your Honor.

Would you so stipulate to that, Mr. Blyer, upon your review of the records?

MR. BLYER: Not quite.

It seems to say that even though it was in the second column, it's Monday, which was the second day of your payroll week, because the payroll ends on Saturday. I mean, look at the letters next to the numbers.

MR. PULVERMACHER: I think you will find

that the first day of every week is a Sunday.

MR. BLYER: You don't work Sunday.

JUDGE PLAINE: The bottom of the columns indicates separate days in the printing, so that the first work day for this employee appears to be for the second day, if that's accurate.

MR. PULVERMACHER: That is accurate, your Honor.

JUDGE PLAINE: And what is the second day?

Is that a Monday or a Tuesday?

MR. PULVERMACHER: The second day of every week is a Monday.

JUDGE PLAINE: I'm talking about your employer's form.

MR. PULVERMACHER: No, sir.

That refers to a week on a calendar basis.

JUDGE PLAINE: Oh, I see.

MR. PULVERMACHER: And if you would refer to a calendar, notwithstanding the first work day of a week is a Monday, the first day of a week is Sunday. Pay is as of the preceding Saturday, which is the close of a calendar week. The record is maintained on the same basis as the calendar.

MR. BLYER: Okay.

JUDGE PLAINE: So that the second day in the week of February -- for the week ending February one, would be Monday, the 27th?

MR. PULVERMACHER: Yes, your Honor.

JUDGE PLAINE: I see.

And the second day would be Tuesday, the 28th?

MR. PULVERMACHER: Yes, your Honor.

JUDGE PLAINE: All right.

MR. PULVERMACHER: There seems to be, I would say, at this point no dispute that the witness was fired on a Wednesday and that he was paid on a Friday.

I wonder if we could clarify that for the record.

MR. BLYER: That is my understanding.

JUDGE PLAINE: Fired on a Wednesday?

MR. PULVERMACHER: Yes, your Honor, fired on a Wednesday.

He was paid on a Friday, I believe is the fact.

We do have a dispute as to which Wednesday, and it's insignificant as to which he was paid.

THE INTERPRETER: May I go out for a drop

of water for a minute?

MR. PULVERMACHER: Your Honor, may we take a moment's break at this point.

It's mid morning --

JUDGE PLAINE: May I be very frank with you people.

I've been terribly concerned about breaks. Breaks that start with five or 15 minutes usually become more than that, they become double or more. I'm perfectly happy to give a break if we will have an agreement here and now that we're going to stock to the time that I set.

MR. PULVERMACHER: No problem.

JUDGE PLAINE: Can we agree with that?

Let's agree with that.

MR. PULVERMACHER: No problem, your Honor.

JUDGE PLAINE: Let's take a five-minute break. That means we'll be back five minute to the hour. It will be 11 o'clock on this clock.

MR. PULVERMACHER: Your Honor, for the record, in the breaks that have extended, they have involved the settlement discussions.

JUDGE PLAINE: I realize that.

MR. PULVERMACHER: It was not for purposes

of break.

JUDGE PLAINE: I understand, but we're really losing so much time with this hearing.

We will be off the record for just five minutes, gentlemen.

(Time noted: 10:50 a. m.)

JUDGE PLAINE: Back on the record.

Please read back the last remarks, Mr. Reporter.

(Record read.)

BY MR. PULVERMACHER:

Q Mr. Arroyo, in December did you attend a shop meeting at which all of the employees were present?

THE INTERPRETER: In December, did you say, counsel?

MR. PULVERMACHER: Yes,

A Yes, I was present.

Q And this gentleman who I'll identify for the record that I'm pointing to, Mr. Peter Olivieri, he was present?

A Yes, sir.

Q Did you hear him make a speech?

A Yes, sir.

Q Did you understand what he was saying?

A Yes, sir.

Q Did you understand he was a delegate from Local 318?

A I believe so, although he didn't identify himself. He said he was from Local 318, but he didn't show any proof that he was.

Q And did everybody in the shop attend that meeting who was present that day?

A I believe so.

Q And did he say if any of the workers had a problem with the employer, to go see him or a delegate?

A Yes.

Q And did you hear or see him say who the shop stewards were?

A No.

Q Now, turning your attention to the conversation at which Mr. Stanley was present, would you repeat for us what Mr. Stanley said?

A When?

Q Well, I believe you testified there was one conversation you had in the office with Mr. Rossi and Mr. Stanley.

A When they asked me to sign the cards?

Q Yes, it was following that discussion, at that time.

A. They took Vargas and me to the office.

Q. No.

I just asked you to repeat the conversation that Mr. Stanley said.

A. Mr. Stanley got into the conversation and said that the union was good, that it had good benefits, that the book was $100 and he was going to pay for it and that we had nothing to pay. This, he said,

Q. And did he also say that -- strike that.

When did this conversation take place, if you can fix the time?

MR. INTERPRETER: When?

MR. PULVERMACHER: Yes.

A. The time?

Q. Yes.

A. The time of the day?

Q. Yes.

A. I'm not very sure. Maybe around 11 o'clock or so.

Q. And do you remember the month?

A. No.

Q. Before or after Christmas?

A. When they brought in the cards to sign.

MR. PULVERMACHER: Would you read it back, please?

(Record read.)

BY MR. PULVERMACHER:

Q When they brought in the cards to sign, was that before or after Mr. Olivieri's meeting?

A I am not sure. It may have been before.

Q It could have been after?

A I'm not sure.

Q I see.

And in that meeting you say Mr. Rossi said, in effect, either sign these 318 cards or look for other work?

A Yes.

Q You never got fired after that conversation, did you?

A Because I signed.

If I had not signed, they would have fired me.

Q Do you know of anybody who was fired who supposedly we heard or received such a statement?

A I don't understand.

Q Was anybody fired, to your knowledge, Mr. Arroyo, who did not sign such a card?

A I believe that everybody signed because everybody was afraid of him and in order not to get fired, they all signed.

Q Were you ever told that a contract existed between Local 318 and the shop?

A. I believe so.

Q. Who told you?

A. Norris.

Q. Didn't Pete Olivieri tell you that at the meeting?

A. Yes, he did.

Q. Didn't Stanley tell you that in the meeting in the office?

A. No.

Q. Didn't Stanley -- strike that.

I understood your direct testimony to be, Mr. Arroyo, that Mr. Stanley said that there could only be one union in the shop.

A. No, I didn't say that.

Q. It's your testimony that Mr. Stanley didn't say anything about 318 being in the shop in that conversation.

Is that correct?

MR. BLYER: Your Honor, I would object to that question.

It calls for the witness to summarize his testimony.

I think that leads to serious problems. I think he ought to be requested what in fact the conversation was, rather than to ask him, in his own

mind, summarize the testimony and ascertain whether or not he mentioned anything about --

MR. PULVERMACHER: May I ask that the question be re-read so we all have the question fresh in our minds.

JUDGE PLAINE: All right.

(Record read.)

MR. BLYER: It calls for a conclusion, your Honor, which is very dangerous.

JUDGE PLAINE: Well, I can see why, because the witness has talked a little bit about -- I mean not a little bit, he's talked a good deal about what this conversation consisted of. Indeed the part of the conversation, if I can recall it just recently, was to the effect that this was a good union, meaning 318 was a good union. So obviously he did testify that Stanley spoke about 318.

MR. PULVERMACHER: Well, he's now denying that he said anything -- that Stanley said anything about 318 being in the shop.

MR. BLYER: What does that prove?

It just proves perhaps --

JUDGE PLAINE: All it's proving that perhaps you're confusing hthe witness.

I don't believe that that's the way to

carry on cross examination.

MR. PULVERMACHER: I'm trying to unconfuse myself of what the witness has already said.

JUDGE PLAINE: Well, you do recall, now that your memory is refreshed, that he specifically said just a few questions back that in Stanley's office, Mr. Stanley said that the union was a good union and had benefits, were of value to these people. So obviously he talked about the union.

MR. PULVERMACHER: All right.

JUDGE PLAINE: The witness testified he even said he would pay for the union book.

MR. PULVERMACHER: Let me tie it up another way, your Honor.

JUDGE PLAINE: Proceed.

BY MR. PULVERMACHER:

Q Which union was Mr. Stanley referring to in that conversation?

A Supposed to be the 318.

Q No question that it was not 155?

A No doubt.

Q And that was the full -- you've given us the full extent of Mr. Stanley's participation in this conversation?

A. Yes.

MR. PULVENMACHER: I have no further cross examination, your Honor.

JUDGE PLAINE: Very well.

Is there some redirect?

MR. BLYER: Yes, your Honor.

JUDGE PLAINE: Very good.

Proceed.

REDIRECT-EXAMINATION

BY MR. BLYER:

Q Mr. Arroyo, when you were told that you were fired, was there any mention that it was due to your lateness or any --

MR. PULVENMACHER: Objection.

That's an improper form of a question. It's a leading question, your Honor.

MR. BLYER: Well, I can try to rephrase it, your Honor.

JUDGE PLAINE: All right, if yoàu can to obviate any discussion on this.

MR. BLYER: Yes.

BY MR. BLYER:

Q Mr. Arroyo, when you were told that you were fired, was there any mention of any other reason for your being fired other than the fact that you supposedly

made errors or an error?

MR. PULVERMACHER: I'm going to object to the question.

JUDGE PLAINE: Hold it, Mr. Interpreter.

What's the objection?

MR. PULVERMACHER: It's way beyond the scope. He didn't testify to that on cross or direct.

JUDGE PLAINE: Oh, no, for Heaven's sake, you covered this up and down the line.

MR. PULVERMACHER: I got the whole conversation here.

Now he's trying to vary -- the witness never testified to any other reason.

He's asking for another reason. He's trying to suggest something to the witness.

JUDGE PLAINE: No, no.

MR. PULVERMACHER: That's why I've objected to the leading question.

MR. BLYER: Suggest?

JUDGE PLAINE: He's worked his way out of the leading characteristic that you thought might be there.

The question is proper.

I'm sorry, if you can remember it,

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Mr. Interpreter, please give it to the witness.

THE INTERPRETER: May the question be repeated?

JUDGE PLAINE: I think it might be wise if the Reporter reads back the question.

(Record read.)

A I was given to understand also that it was because of matters with Local 319, matters involving 319.

A MAN: He said 155.

MR. INTERPRETER: I'm sorry, maybe I made a mistake.

What is it?

MR. BLYER: Let him repeat the answer, please.

MR. PULVERMACHER: I think the translation was correct.

JUDGE PLAINE: Repeat the question to the witness, please.

THE INTERPRETER: Yes, sir.

The witness says now that because I was working with Local 155, that I understood that they would fire me also because of this, because I was with them, they saw me with them.

MR. BLYER: Okay. Wait.

MR. PULVERMACHER: May I have the whole answer read back.

JUDGE PLAINE: Now hold it just a minute.

Did you have some comment you wanted to make, Mr. Blyer?

MR. BLYER: Yes, your Honor.

I'm going to repeat my question or -- I think it would be helpful to have the answer read back to see if my question was read back.

JUDGE PLAINE: All right.

Mr. Reporter.

(Record read.)

MR. BLYER: Okay.

May we go off the record, your Honor?

JUDGE PLAINE: Yes.

Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

The interrelation by the Interpreter of the words, "The witness says now," should be stricken. Those were the Interpreter's words.

THE INTERPRETER: Yes, sir.

JUDGE PLAINE: They do not reflect precisely what the witness himself said.

MR. BLYER: Thank you.

JUDGE PLAINE: Please proceed.

MR. BLYER: Yes, sir.

BY MR. BLYER:

Q. Now, Mr. Arroyo, was there any other reason that you were told that was the reason why you were fired?

A. No.

Q. Now, you mentioned that you thought your involvement with Local 318 and Local 155 was a reason for your discharge.

Isn't that correct?

A. I believe it was one of the reasons.

Q. Okay.

But when Norris told you the reasons you were fired, Mr. Arroyo, did -- strike that.

When Norris told you that you were fired, did he mention Local 318 or Local 155?

A. No.

Q. On Friday when you came to pick up your check and you spoke with Mr. Yagoda, was there any mention of Local 155?

MR. PULVERMACHER: Objection.

I believe that's at variance with the testimony and it assumes a fact not stated.

MR. BLYER: Your Honor, I withdraw the

question.

I think the record already reflects that testimony. It was just repetitive.

JUDGE PLAINE: Very good.

Proceed.

BY MR. BLYER:

Q Now, at any time, Mr. Arroyo, were you given any written or verbal warnings regarding any alleged lateness or absences?

A No, sir, never.

Q With regard to the error that Carmine spoke about --

THE INTERPRETER: I'm sorry, would you start the question again. I was distracted.

JUDGE PLAINE: Please counsel, the Interpreter can't hear.

MR. PULVERMACHER: I'm sorry.

BY MR. BLYER:

Q With regard to the error that Carmine spoke about to the whole Packing Department, when did that occur in relation to Christmas?

A I believe it was before Christmas.

Q Can you give us an idea of how much before?

A About three weeks. I don't remember well.

Q It wasn't a day or two before, was it?

A. No.

Q. Quite a bit more?

A. Yes.

Q. With regard to the timecards, the records -- the timecards reflect -- and this can, of course, be checked -- that you were absent approximately eight times from work during your period of employment if we put aside the period from Christams until you claim that you were recalled on a regular basis.

A. Yes.

Q. And your testimony has been so far that you were absent two or three or four times.

Can you explain the difference?

A. As far as I recall.

Q. Now, if there is any significant difference, can you explain the difference why you thought you were absent three or four times and the cards seem to say about six?

MR. PULVERMACHER: Objection.

Counsel has misstated the testimony of the witness originally, which was two or three, has now increased it to three or four.

MR. BLYER: If it was two or three, that's all right, too.

MR. PULVERMACHER: Let the question be

restated, please.

JUDGE PLAINE: Mr. Blyer, please rephrase your question.

MR. BLYER: Yes, sir.

BY MR. BLYER:

Q Can you explain why perhaps, if you know, you say that you were absent either two or three times since you began working for the company and the cards seem to say about six times?

MR. PULVERMACHER: Objection.

Previously you said seven times, which I agreed to that, because that's what the cards seemed to show to me.

JUDGE PLAINE: I heard six several times.

MR. PULVERMACHER: Pardon?

JUDGE PLAINE: I heard six several times.

MR. PULVERMACHER: The first time he started with the -- one of the times he said seven, and that's a statement I agree with.

JUDGE PLAINE: What period are we talking about?

MR. PULVERMACHER: We're talking about the period commencing with the week ending October 26th, which Monday would have been --

MR. BLYER: It's my question.

Why don't I ask the question that the judge has put?

MR. PULVERMACHER: All right.

MR. BLYER: The evidence shows that he was employed sometime during the week ending 10-19, and we have timecards to prove the week ending February 28th, which convers any date that he may have been fired at.

My investigation of the cards reflects that, at most, he was absent six days.

JUDGE PLAINE: In that whole period or just a portion of that period?

MR. BLYER: In that whole period but for this period of time from the Christmas party until he came back on a regular basis.

MR. PULVERMACHER: I object.

JUDGE PLAINE: What's wrong with that?

MR. PULVERMACHER: Because it's nine times.

MR. BLYER: It may be 89 times.

MR. PULVERMACHER: Well, the restate the question.

Either let's agree to what he was absent or state it accurately.

MR. BLYER: I'll be glad to agree with it.

MR. PULVERMACHER: Nine times?

MR. BLYER: Will you show me the cards, each one, and then I'll ask the witness for each day perhaps.

Let's go off the record on this, please, your Honor?

JUDGE PLAINE: Yes.

Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

MR. BLYER: I offer the following stipulation:

The timecards reflect that apart from the period where we have cards for the week ending 12-18,1-4-75 and 1-11-75, apart from that period of time, that Mr. Arroyo was out of work eight days.

MR. PULVERMACHER: I respectfully suggest that counsel has by this statement, artfully avoided reference to the two days reflected on the week ending December 21, '74 where he was out two days, although the records reflect he was paid for one day though out.

MR. BLYER: We counted that one.

MR. PULVERMACHER: No, we didn't. It's eight plus two.

MR. BLYER: No, it isn't. Why don't you

go through it yourself?

MR. PULVERMACHER: The first week of the 19th, what's the number of days missing?

MR. BLYER: Three.

MR. PULVERMACHER: Three?

MR. BLYER: Yes.

MR. PULVERMACHER: All right, I'll take your figures. I agree with them.

MR. BLYER: Do we have that stipulation?

JUDGE PLAINE: The stipulation is what, for my benefit?

MR. BLYER: That Mr. Arroyo was absent from work eight days, not including the period for the weeks ending 12-28-74, 1-4 and 1-11-75.

MR. PULVERMACHER: We also have it in that period of time, the records reflect that he would have missed two days for the week of December 28th and five days for the week ending January fourth and five days for the week ending January the 11th.

JUDGE PLAINE: The stipulation purported to exclude those three weeks.

MR. PULVERMACHER: I understand the stipulation so reflects that, your Honor, but that the portion of the period that was excluded, there's a total of 12 days, which constitutes 12 working days.

That's all I'm trying to clarify the record on that point for.

MR. BLYER: All right.

JUDGE PLAINE: Does that help you?

MR. BLYER: I don't need it. I thought we did that already.

JUDGE PLAINE: Proceed.

MR. BLYER: Okay.

BY MR. BLYER:

Q I'm going to show you, Mr. Arroyo, what's been received in evidence as Respondent's Exhibit #4. I'm going to give you all the timecards.

If you recall, Mr. Arroyo, your testimony was that you thought that you were absent from work maybe two or three times.

MR. PULVERMACHER: Objection.

That's a cross examination question. It's leading. It's just not an appropriate redirect question.

JUDGE PLAINE: No, no.

This is a preliminary way of trying to get this comparison done. For Heaven's sake I don't think we're leading here.

MR. PULVERMACHER: All right, I'll withdraw it.

JUDGE PLAINE: Go ahead.

BY MR. BLYER:

Q Now, the timecards reflect a total of eight days out. We're not including this period around Christmas.

The cards for the week ending 10-29 shows that you missed three days. And then for the week ending 11-9, we have two days. And then for the week ending 12-21, we have two days. And then for the week ending 1-25-75, we have one day.

Take a look at these on the sheets I just pointed out to you, and tell me if you can explain the difference in your testimony and what the records seem to show?

Do you understand the question?

A Yes.

Q Okay.

A Since I don't keep records of the days I didn't work and I don't have notes anywhere to base myself on my statement, I had the idea that I was only absent two or three days.

Q Now, were there days that you were prepared to go to work and were told not to come to work?

MR. PULVERMACHER: Objection.

That's a leading question just by itself.

He's suggesting the answer in here. The witness has said he didn't know and he's testified -- I never went into that in cross.

JUDGE PLAINE: I'll sustain the objection.

MR. BLYER: I will note, your Honor, that there was such a response to a very similar question at an earlier point. I was just trying to direct the witness to that testimony to see if that was an explanation to this question, which I think it is.

JUDGE PLAINE: Well, if it's in the record, you will point it out to me.

MR. PULVERMACHER: Then it's in the record.

MR. BLYER: Okay. Good enough. I will then.

BY MR. BLYER:

Q Mr. Arroyo, when you received your raise from two dollar and sixty cents an hour, approximately two weeks before you were let go, was there any mention of any poor work that you had performed?

A No.

If such was the case, they would not have given me a raise.

MR. PULVERMACHER: I move to strike that last portion.

JUDGE PLAINE: Well, I understand that.

MR. PULVERMACHER: Okay.

BY MR. BLYER:

Q Was there any mention of lateness or absences?

A No.

Q Now, did you receive that raise after Christmas?

A After Christmas?

Q Yes.

A I believe yes. I don't remember exactly.

MR. BLYER: May I see the -- may we examine the books and records to get an exact date when he received a wage increase from two-sixty to three dollars an hour?

MR. PULVERMACHER: We have the books here.

JUDGE PLAINE: Off the record, please.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

BY MR. BLYER:

Q Now, when Norris spoke with you and told you you were fired, did he tell you he was also firing the picker?

MR. PULVERMACHER: Objection.

JUDGE PLAINE: What's your objection?

MR. PULVERMACHER: Again leading.

MR. BLYER: I'll rephrase it if that bothers you.

MR. PULVERMACHER: It does when you are dealing with this witness.

MR. BLYER: Yes, sure, this witness.

BY MR. BLYER:

Q When you were told by Norris that you were fired, did he tell you that he was firing anyone else?

A No.

Q And did he tell you that he was going to investigate what pickers made the error?

A No.

Q Did he say that he would speak to the pickers or Mr. Vargas about the error?

A No.

Q To your knowledge, did in any way he tell you that he was going to investigate the matter and so who in fact was responsible?

A No.

He simply told me that I was fired, that Pete Rossi said that I was fired.

Q Did Mr. Rossi ever come over to you and talk to you about this matter?

A No.

Q And, Mr. Arroyo, what were the reasons given to

you by Carmine as to why -- well, that's withdrawn.

You had a conversation, I think you testified, with Carmine about right around Christmas time.

A. Yes.

Q. And I think your testimony was that he told you that you shouldn't come in because it was slow.

Is that correct?

A. Yes.

Q. And you called him every morning to see if there was work for you; is that correct?

A. He, himself, told me to call him every morning to find out whether there was work or not.

Q. Did he give you any other reason for not coming into work?

A. No.

He simply said that work was very slow.

MR. BLYER: With your permission, your Honor, I would like to review my notes one more time.

JUDGE PLAINE: Yes, of course.

MR. BLYER: Thank you.

BY MR. BLYER:

Q. Mr. Arroyo, was Norris or Orie working for the company when --

THE INTERPRETER: Was Norris what?

Q. Was Norris or Orie working for the company when you

were terminated? JA214

A. Yes.

Q. To your knowledge, Mr. Arroyo, at the time from Christmas until early January, besides you and Mr. Vargas, was anyone else let go?

Not just in the Packing and Shipping Department, how about in the machine shop, the machine operators, if you know.

A. Louis Martinez and another boy called Frankie --

MR. PULVERMACHER: Who?

THE INTERPRETER: Frankie.

A. -- who is a cutter, he was fired because he didn't want to work on a Saturday.

Q. Do you know Esmeralda Diaz?

A. I don't know her very well by name.

Q. Do you know if she worked during that period of time?

A. No.

Q. You don't know?

A. No, I don't know.

Q. Okay.

MR. BLYER: Can we get the date on that?

MR. PULVERMACHER: Just a moment.

JUDGE PLAINE: Off the record on this, please.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

Mr. Blyer.

MR. BLYER: I have no further questions of this witness.

JUDGE PLAINE: Let's have it understood that you and your client will work out some way of ascertaining this.

MR. PULVERMACHER: Yes.

JUDGE PLAINE: General Counsel will have the privilege of examining a little further on this.

A MAN: I've found the answer.

January 18th.

MR. BLYER: The week ending January the 18th?

A MAN: Yes.

JUDGE PLAINE: Can we have a stipulation?

MR. PULVERMACHER: Yes, your Honor.

May we further identify for the record that the week of January the 18th is the first week after the hiatus.

MR. BLYER: How much was he getting?

A MAN: He was getting $101 for 35 hours. I don't know what the exact arithematic is on it, but that's when it appears that his raise went into effect,

to bring him up to what everybody else was making at the time.

MR. BLYER: All right.

A MAN: When he came there, he was inexperienced.

MR. PULVERMACHER: Please, that's enough.

JUDGE PLAINE: All right.

The stipulation is that the pay raise from 260 per hour to three dollars or --

MR. BLYER: Three dollars.

JUDGE PLAINE: -- to three dollars an hour occurred in the week of --

MR. BLYER: For the week ending January 18th.

JUDGE PLAINE: -- for the week ending January 18th, 1975.

MR. BLYER: That was the first -- that was, I guess, the first day of that week.

MR. PULVERMACHER: Well, it's effective that week.

JUDGE PLAINE: All right.

MR. PULVERMACHER: And it was effective as of the first day of that week. I don't think that's important.

JUDGE PLAINE: All right.

Do you have any further questions, Mr. Blyer?

MR. BLYER: I just might have one or two, your Honor, I'm sorry, your Honor.

MR. PULVERMACHER: Oh, I'm sorry, I thought he was finished.

MR. BLYER: I have nothing further, your Honor.

JUDGE PLAINE: Is there some recross examination, Mr. Pulvermacher?

MR. PULVERMACHER: Yes, your Honor.

JUDGE PLAINE: Please proceed.

RECROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Mr. Arroyo, when you were hired, did you realize that you were hired as an inexperienced person?

MR. BLYER: Objection, your Honor.

I think the question is improper, did he realize?

It calls for again a state of mind.

JUDGE PLAINE: Yes, I think he's right, I think counsel is right.

I think the question properly could be, if you want to ask that question, was he told?

MR. PULVERMACHER: All right.

BY MR. PULVERMACHER:

Q. Were you told that you were hired as an inexperienced person?

A. No.

They told me they needed somebody with experience, and I told them that I did have experience.

Q. Isn't it a fact that you were told that when you got experience, you would get a raise?

A. No.

Q. There was no conversation about these two subjects when you were first hired?

MR. BLYER: Objection, your Honor.

That question is much too vague.

JUDGE PLAINE: Can't you tighten it down, counsel?

MR. PULVERMACHER: All right.

BY MR. PULVERMACHER:

Q. Was there any discussion, Mr. Arroyo, about when you would get a raise at the time you were hired?

A. No.

Q. Did you know how much money you were getting when you started to work there?

A. Two-sixty.

Q. And how was that sum arrived at?

MR. BLYER: Objection, your Honor, to the

relevance.

JUDGE PLAINE: The point is he apparently was told two-sixty an hour.

MR. PULVERMACHER: All right.

BY MR. PULVERMACHER:

Q Do you know what the other people in the Packing and Shipping Department were receiving?

MR. BLYER: Objection, your Honor, as to relevance.

JUDGE PLAINE: I'm going to sustain the objection.

MR. PULVERMACHER: Your Honor, it's not irrelevant, it's going to be the employer's contention that he was told he would get a raise after a period of time and he got some experience in there.

JUDGE PLAINE: The point is the witness denies that that was so.

So how is this a matter of defense?

Maybe with some other witness you can bring this out.

MR. PULVERMACHER: At the point he claims to have asked for a raise was the time when the experience factor would have generated a raise and that he knew that.

JUDGE PLAINE: That may be another

question, but that was not the question here.

MR. PULVERMACHER: Yes.

JUDGE PLAINE: The question is:

Did he know what other were getting?

I don't think that that has any bearing on what he was given.

BY MR. PULVERMACHER:

Q When you asked for a raise, did you know what the other people in the Shipping and Packing Department were getting?

MR. BLYER: Your Honor, that's the same question.

I object.

JUDGE PLAINE: Well, now he's --

MR. PULVERMACHER: I've tightened it down to a specific time.

JUDGE PLAINE: He's asking at the time he was given a raise --

MR. PULVERMACHER: Asked for a raise.

JUDGE PLAINE: -- or, asked for a raise, was he aware of what others were getting?

I think permissible.

MR. BLYER: All right.

A No.

Q Now, in redirect testimony, Mr. Arroyo --

MR. BLYER: Your Honor, I'm not quite sure the witness will understand what he means when he says your redirect testimony.

JUDGE PLAINE: I think that's going to be confusing.

MR. PULVERMACHER: All right.

BY MR. PULVERMACHER:

Q When counsel for the Labor Board was just asking you some questions, you for the first time said that you have reason to believe and that you were given to understand that you were fired by reason of your relations with Local 155.

Isn't that right?

A Yes, sir.

Q Who gave you that reason to believe that statement?

A As I said also in my testimony, that one day I was talking with Quinones and Pete saw us. Pete knows that Quinones is from Local 155.

Q So it was during your discussion with -- I withdraw that question.

When did this occur that you were talking with Quinones that you say you were seen by Peter Rossi?

A I believe it was a Monday three days before he was fired.

MR. BLYER: I believe he stated 30.

JUDGE PLAINE: Let's get it straight now.

Ask the question again and let's get the witness' answer.

May we?

MR. PULVERMACHER: Yes.

JUDGE PLAINE: Would you repeat it, Mr. Reporter, the question.

(Record read.)

A. Monday.

Q. Monday?

A. Monday.

Q. At what time of the day?

A. In the morning.

Q. What time in the morning?

A. I don't remember exactly. It was about eight o'clock, 8:05.

Q. Mr. Rossi usually in the plant that early?

MR. BLYER: Objection to relevance, your Honor.

MR. PULVERMACHER: Oh, come on, counsel.

MR. BLYER: It only matters where he was that day.

JUDGE PLAINE: Well, now, as a matter of

fact, I assume that this was outside the plant.

MR. PULVERMACHER: Certainly.

JUDGE PLAINE: From what I heard before, this was outside the plant.

MR. PULVERMACHER: Yes, it was outside the plant.

JUDGE PLAINE: Then what's your inquiry about now?

What are you inquiring as to now?

MR. PULVERMACHER: I'll rephrase the question, your Honor.

JUDGE PLAINE: All right.

BY MR. PULVERMACHER:

Q Did Mr. Quinones in fact suggest this reason to you?

A No.

It's my own suggestion. I believe that if he saw me talking to him, it's supposed to be that we were talking about the union.

MR. PULVERMACHER: Now it's been established that it's a subjective aspect of this witness which has come into testimony concerning which I was specifically prohibited from proceeding.

I, therefore, move to strike all of the testimony --

JUDGE PLAINE: Hold on, counsel.

MR. PULVERMACHER: Can I make the statement for the record, your Honor?

JUDGE PLAINE: This testimony about having a conversation with the union man before he was fired came in on direct testimony on the witness' testimony yesterday. This is not anything new.

If you thought there was something improper about that, at that point you had an opportunity to rais it. This is nothing that I can strike now.

MR. PULVERMACHER: Your Honor, there was no testimony in the direct testimony yesterday that he had reason to believe or that he was given to understand that he was fired for union activities.

That only came out in the redirect, your Honor.

I was estopped in my cross examination when we got into the areas of what this witness subjectively thought, specifically upon the grounds that it was improper. But now when the NLRB comes in and gets in all the testimony about his subjective thinking, which is framed in the basis of given to understand and reason to believe, it all comes in. That was never in the direct testimony. And since that

has been estopped, I move to strike out all of the testimony.

JUDGE PLAINE: Let's back up.

Let's start out with day one of this witness' testimony.

MR. BLYER: Your Honor, May I be heard?

If you'd like, I'll wait 'til you're done.

JUDGE PLAINE: Well, just let me make sure --

MR. BLYER: Okay.

JUDGE PLAINE: -- I understood what I heard, what I thought I heard.

MR. PULVERMACHER: This wasn't testified to yesterday, your Honor.

JUDGE PLAINE: That's what I thought.

Let me just review my notes for a minute.

In his direct testimony, Mr. Pulvermacher, the witness indicated that he was fired on a Wednesday and that on a Monday -- I don't know which, I can't say for certain from my notes -- and that on a Monday he had a -- on a prior Monday -- he had a conversation with a Local 155 official and that Rossi came by, saw us and then went on his way.

Now, the testimony came in on counsel's

redirect just a little while ago --

MR. PULVERMACHER: May the record note --

JUDGE PLAINE: -- to which you did not object, counsel --

MR. PULVERMACHER: I did object.

I objected on scope.

We had a whole discussion about that, your Honor.

JUDGE PLAINE: No.

MR. PULVERMACHER: You overruled me specifically on scope.

JUDGE PLAINE: No, no.

I'm talking about -- I'm talking about the redirect that Mr. Blyer put to this witness.

MR. BLYER: I think I can be helpful there, your Honor.

JUDGE PLAINE: All right.

MR. BLYER: I think what happened was, if you recall, Mr. Pulvermacher made an objection to a leading question.

I then reframed the question in such a fashion so as to ask the witness, was there any other reason given to him as to why --

JUDGE PLAINE: Were you told, yes, that's right.

MR. BLYER: Yes.

Unfortunately, the witness went a little further and he said that he thought that another reason was --

MR. PULVERMACHER: That's when I objected.

MR. BLYER: No, there was no objection to that whatsoever, your Honor.

JUDGE PLAINE: That's correct.

I assume this was something that the witness was testifying he was told.

MR. BLYER: Then I clarified it a little further. I asked him were you told that, and he said no. There was no objection.

MR. PULVERMACHER: That's when I moved to strike it all out.

JUDGE PLAINE: If you had, I would have known that very clearly.

MR. BLYER: You did not.

It would be odd if he did.

JUDGE PLAINE: You didn't, counsel.

MR. PULVERMACHER: I beg to differ with you, your Honor.

JUDGE PLAINE: I want to be very clear on this:

I did not rule, I did not have any objection from you on that and I did not rule on it.

I will say to you, counsel, that based on my own understanding of what the translation was, I assumed it was that this was something that the witness was told.

MR. PULVERMACHER: So did I.

JUDGE PLAINE: Mr. Blyer has indicated that the record will reflect --

MR. BLYER: Oh, absolutely.

I brought out quite clearly in the next question, were you told that?

MR. PULVERMACHER: He was asked, did he say anything else?

This witness said no.

It was at that point that we went into this grounds to believe, or just before that.

I thought it was based on an objective statement and not this man's subjective frame of mind.

JUDGE PLAINE: Now we have established that the witness was not directly told this by any one in the employer's employ; is that correct?

MR. BLYER: Well, that's clearly what the record will show, your Honor.

I have no doubt.

JUDGE PLAINE: Well, then there is no necessity to strike it.

It's just something that I can't pay attention to; that's all.

MR. PULVERMACHER: Well --

MR. BLYER: If you recall, your Honor, he argued vigorously that he did not want the witness to testify to subjective feelings. Now he doesn't like the witness; answer, so he moves to strike it.

MR. PULVERMACHER: And I was only suggesting that when I tried to get to a particular aspect that the witness had no basis in fact to believe that he was fired for union activities, I was estopped.

JUDGE PLAINE: Sure you were.

MR. PULVERMACHER: Then when we got into the grounds of belief that you were suggesting, it came in when it was only the witness' mental operation.

MR. BLYER: Absolutely wrong.

MR. PULVERMACHER: I think it's been resolved, your Honor, because there's no correctability in that aspect of it, there's no objective testimony to support it.

MR. BLYER: I wouldn't go that far.

I don't agree, your Honor, that there's no objective testimony to support it.

But I will, however, concede, your Honor, that --

JUDGE PLAINE: This is something that you can present in your brief.

MR. BLYER: That's right.

Thank you, your Honor.

JUDGE PLAINE: Please proceed, Mr. Pulvermacher.

MR. PULVERMACHER: Thank you, your Honor.

BY MR. PULVERMACHER:

Q When you received -- strike that.

I believe you said that Carmine was the one who told you that you would get a raise.

Is that correct?

A He is the one I asked for the raise.

Q And isn't it a fact that Carmine told you that the raise would be forthcoming because you had gotten experience?

A No.

Q And it's your testimony that Vargas was out approximately the same period of time in the month of January 1975 as you were; is that correct?

THE INTERPRETER: He was out at the same time, you say?

MR. PULVERMACHER: Yes, out of work.

A. Yes, I believe so.

Q. With respect to the work period just before Christmas, was that a busy period?

A. Yes.

Q. And you have no reason to know whether or not the period after Christmas was in fact busy or not?

A. What do you mean by that?

Q. Did you speak to Vargas during that week or ten days period that you were out of -- I think it's two and a half week period that you were out of work?

THE INTERPRETER: With Vargas?

MR. PULVERMACHER: Yes.

A. Yes.

Q. Isn't it a fact that Vargas was working in that period of time?

A. I don't know whether he was all the time working or not working.

MR. PULVERMACHER: I didn't ask him that.

BY MR. PULVERMACHER:

Q. Isn't it a fact that he was working part of the time?

THE INTERPRETER: Ask him.

MR. PULVERMACHER: I am.

THE INTERPRETER: You asked me.

BY MR. PULVERMACHER:

Q Isn't it a fact that Vargas was working there part of the time?

A I believe so.

Q Now, you believe he was working but a few moments ago you said you believed he wasn't working. Which is it?

MR. BLYER: Your Honor, I object. He's answered the question.

MR. PULVERMACHER: No.

I'm getting two different answers, depending which way I phrase it.

JUDGE PLAINE: Well, it makes a difference.

(Laughter.)

MR. PULVERMACHER: He doesn't know what he believes, it seems to me.

JUDGE PLAINE: No.

It makes a difference the way you phrased it.

Phrasing is very important, counsel, as you well know.

The witness has made fairly clear, as far as I can see, that he didn't believe Vargas worked full time in this period but that he may have worked

part time.

BY MR. PULVERMACHER:

Q Did Vargas tell you how buy the plant was while he was working when you were not?

MR. BLYER: Objection, your Honor.

JUDGE PLAINE: Hold it, Mr. Interpreter.

MR. BLYER: On the grounds of relevance. It wouldn't matter.

JUDGE PLAINE: If you forgive me, I didn't hear the question, so I'm not sure I know what I'm ruling on.

MR. BLYER: The question was whether he spoke to Vargas and whether Vargas told him during this period of time, that is, this two and a half week period, whether it was busy or not, whether Vargas told him whether it was busy or not.

That doesn't establish it was busy or not.

JUDGE PLAINE: I'm curious as to what import the question has, counsel, for us.

MR. PULVERMACHER: I'm trying to attack the statement that Vargas wasn't working there, by getting the witness to discuss whether or not they discussed Vargas' activities in the plant at the time. Vargas was working there, which is the fact, and this

witness knows it.

JUDGE PLAINE: Well, the witness indicated that he believed he worked part of the time.

MR. PULVERMACHER: But then he also previously said he didn't work while this witness was out of work. That also has been testified to this morning about three minutes ago, your Honor.

JUDGE PLAINE: Well, again, I don't -- I fail to see, counsel, what this has to do with what we're concerned with.

MR. PULVERMACHER: Well, your Honor, we're talking about this witness' statement that Carmine Minichino told him that work was slow.

JUDGE PLAINE: Yes.

MR. PULVERMACHER: Which in fact was never made, which in fact is used as a cover up for this witness' inadequacies and incapacities and incapabilities. He was given a second chance. He was given an experience raise to stimulate him to do a good job. Nothing helped. I'm just attacking this witness' ability to do work.

It has nothing to do -- this witness has given us reasons that he was associated with 155, which are only in his mind, has a relationship to his firing.